



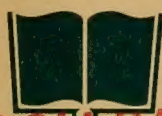


*Alfred Emerson*

*1880*



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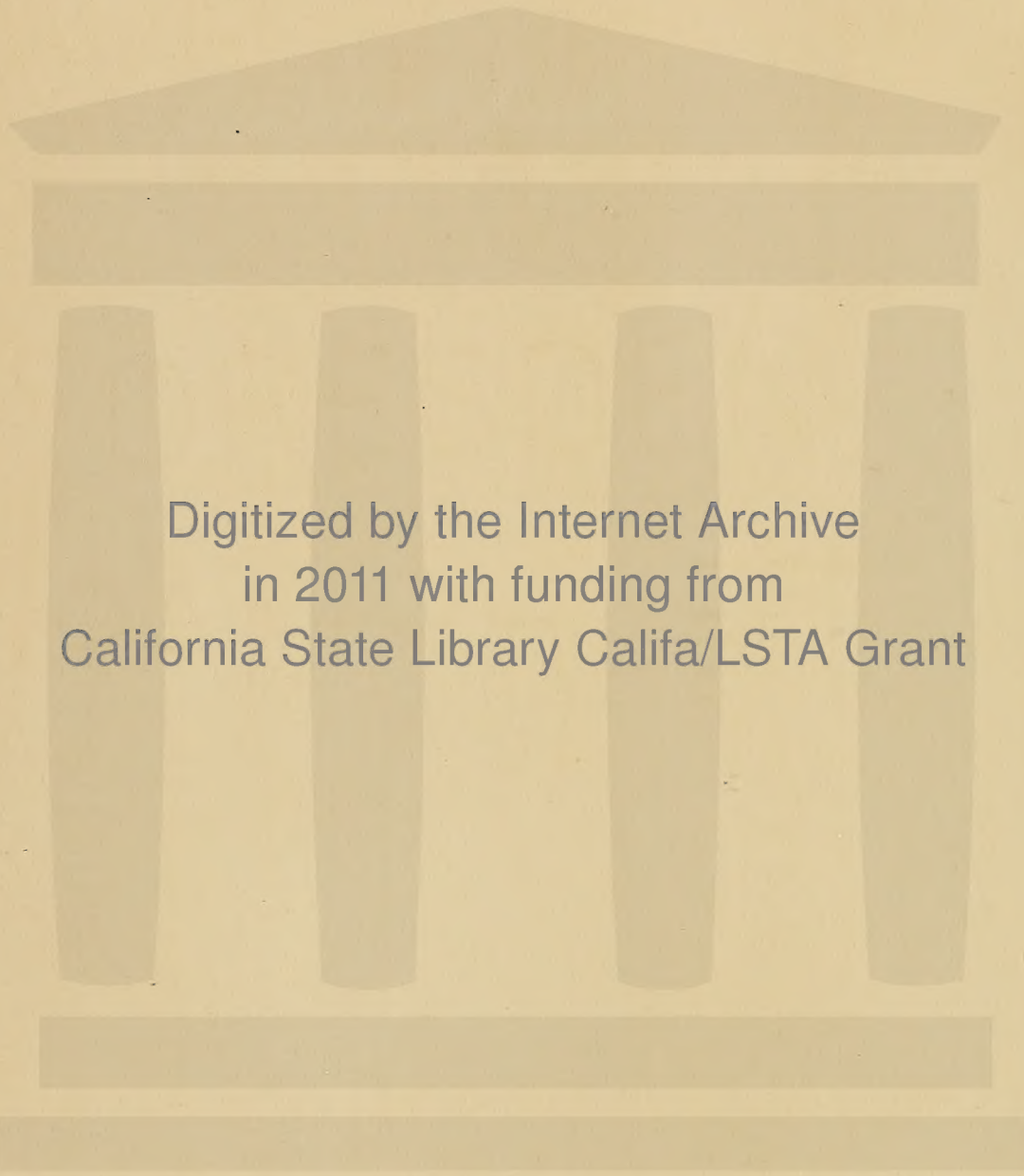


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MEMORIAL OF S. M. TIBBITS, A. M. SIMPSON AND OTHERS,  
GRANTEES OF CITY AND COUNTY OF SAN FRANCISCO,  
FOR  
ESTABLISHMENT OF SOUTHERN LINE  
OF  
PRESIDIO RESERVATION,  
IN ACCORDANCE WITH SURVEY OF U. S. SURVEYOR-GENERAL,  
WITH REASONS THEREFOR, &c., &c.

-oOo-

January 30, 1874.  
San Francisco:

Women's Union Print, 424 Montgomery street.

1874.

(8.10 pp.18.)

To the Hon. Congress of the United States:

The Memorial of S. M. Tibbits, A. M. Simpson, and other purchasers from the City and County of San Francisco of lands, heretofore considered as municipal property but now claimed to be within the Presidio Reservation, respectfully represents:

That the said lots were delineated upon the official survey of the Pueblo of San Francisco, made by the U. S. Surveyor-General at the instance and under the directions of the proper department at Washington, as not within the Presidio Reservation; that, upon the faith of the official survey so made, the City and County of San Francisco marked the said lands upon its official map as belonging to the municipality, extended its streets, public places and blocks over the same; and, in accordance with the general plan adopted in reference to other municipal lands, received in money actually paid into the treasury the purchase price thereof; issued and delivered deeds to the purchasers, and collected taxes thereon.

Under these circumstances, we feel justified in asking of your Hon. Body that said lots may be relinquished and confirmed to us, as grantees of said City and County; and for the purpose of presenting concisely the facts of the case and the reasons of our request, we beg leave to submit:

First. That it is doubtful whether the Presidio Reservation, properly speaking, ever embraced the lots in question.

Second. That, if it did embrace them, they were afterwards excluded, and so treated by competent United States authorities.

Third. That the alteration in 1870 of the Reservation lines, established by the U. S. Surveyor-General in 1866, so as to make the new lines include said lots, was unjust and inequitable.



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Third. That the alteration in 1870 of the Reservation lines, established by the U. S. Surveyor-General in 1866, so as to make the new lines include said lots, was unjust and inequitable.



I.

IT IS DOUBTFUL WHETHER THE PRESIDIO RESERVATION,  
PROPERLY SPEAKING,  
EVER EMBRACED THE LOTS IN QUESTION.

The original reservation was made by President Fillmore, on November 6, 1850, and described as follows:

"From a point eight hundred yards south of Point Jose to the southern boundary of the Presidio, along the southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos". (See Dwinelle's Colonial History of San Francisco, Addenda 210. C XIII, page 221.)

It will be noticed in the foregoing description that the words used are "the southern boundary of the Presidio", nothing is said about any "Presidio tract." In ordinary and popular acceptation the "Presidio" was the quadrilateral enclosure, six hundred feet square, used as a barracks. The name was not usually applied to land outside of the enclosure. In the case of San Francisco there was a place of pasture near the Presidio called "El Rancho del Rey", and a battery not far off, called "El Castillo"; but they were distinct from, and not a part of, the "Presidio". (Dwinelle, Narrative, Sec. 25, page 19.)

There is no record to show, and no one can pretend, that there was any special tract of land known or recognized at any time previous to the above order as forming a part of, or belonging to, the Presidio. If there was any land outside of the enclosure, appertaining or claimed to appertain to it, such land was entirely indefinite in extent and position, and absolutely incapable of location. The truth of this abundantly appears from the fact, that when the above description was sent on by the Commissioner of the General Land Office to the U. S. Surveyor-General of California on June 24, 1851, Mr. King, the then Surveyor-General, was unable to fix the points and sent back to the Land Office at Washington for "additional instructions to enable him to run the lines".

The Land Office referred the subject to the Engineer Department; and on October 28, 1851, Joseph G. Totten, Bt. Brg. Gent. of Engineers, in the name and as the act of that Department, perceiving the difficulty above suggested and recognizing the fact that the reservation as first ordered was at any rate unnecessarily large, recommended a reduction. He therefore wrote to Mr. Conrad, Secretary of War, transmitting his recommendation, and enclosing a sketch or diagram, showing distinctly by "red lines" the reduced reservations as proposed. The communication is given in extenso in the above-cited Dwinelle's Colonial History, Add. CXIII. A lithographic fac simile of the sketch or diagram -- being the very document upon and in accordance with the red lines of which the reservation as reduced was ordered by President Fillmore -- we have attached hereto by way of frontispiece.

General Totten, in his communication, states the fact of the application of the Surveyor-General for additional instructions and the further facts, that up to that time no survey had been made of the Reservation, and that there was no plat on file. But he adds, speaking for the "Joint Board of Navy and Engineer officers lately on that coast", that the sketch enclosed



I.

IT IS DOUBTFUL WHETHER THE PRESIDIO RESERVATION  
PROPERLY SPANNING  
EVER ENBRACED THE POINT IN QUESTION.

The original reservation was made by President Fillmore, on November 6, 1850, and described as follows:

"From a point eight hundred yards south of Point Loe to the southern boundary of the Presidio, along the southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Point Loe and Point Loeos." (See Dwinelle's Colonial History of San Francisco, Appendix A, C XII, page 221.)

It will be noticed in the foregoing description that the words used are "the southern boundary of the Presidio," nothing is said about any "Presidio tract." In ordinary and popular acceptance the "Presidio" was the quadrilateral enclosure, six hundred feet square, used as a barracks. The name was not usually applied to land outside of the enclosure. In the case of San Francisco there was a place of pasture near the Presidio called "El Rancho del Rey," and a battery not far off, called "El Castillo"; but they were distinct from, and not a part of, the "Presidio." (Dwinelle, Narrative, Sec. 25, page 19.)

There is no record to show, and no one can pretend, that there was any special tract of land known or recognized at any time previous to the above order as forming a part of, or belonging to, the Presidio. If there was any land outside of the enclosure, appearing or claimed to appear to it, such land was entirely indefinite in extent and position, and absolutely incapable of location. The truth of this abundantly appears from the fact, that when the above description was sent on by the Commissioner of the General Land Office to the U. S. Surveyor-General of California on June 24, 1851, Mr. King, the then Surveyor-General, was unable to fix the points and sent back to the Land Office at Washington for "additional instructions to enable him to run the lines."

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General Totten, in his communication, states the fact of the application of the Surveyor-General for additional instructions and the further facts, that up to that time no survey had been made of the Reservation, and that there was no plat on file. But he adds, speaking for the "Joint Board of Navy and Engineer officers lately on that coast," that the sketch enclosed



"showed the reserve as originally proposed and conjecturally drawn by the Board; also, the two separate reservations now proposed to be substituted."

Gen. Totten's communication and the sketch, which formed a part of it, were transmitted to the Executive on December 20th, 1851; and on December 21st, 1851, President Fillmore, having the sketch before him and clearly with direct reference to it, modified and reduced the Presidio Reservation as follows:

"The Presidio tract and Fort Point, embracing all the land north of a line running in a westerly direction from the southeastern corner of the Presidio tract to the southern extremity of a pond, lying between Fort Point and Point Lobos and passing through the middle of said pond and its outlet to the channel of entrance from the ocean."

It will be observed that the above order makes use of the words "Presidio tract," which were not used in the first order. This order was also made by the President in response to the communication of Gen. Totten, and with General Totten's sketch before him. That sketch delineates the original reservation, as well as the proposed modified and reduced reservations. It shows that the southern line of the original reservation was a straight line, commencing 800 yards south of Point Jose and running westerly through the southern extremity of Mountain Lake, (there called a pond,) to the ocean. It also shows that when the alteration was made in 1851, the object was to "modify and reduce"; that is, not to take in any land not embraced in the original reservation, but to exclude much that had been included. It was proposed to make two tracts; and for the purpose of guiding the President in making the modifying and reducing order, General Totten enclosed the sketch or plat. The sketch, therefore, formed a part of the proposition for modification and reduction; and as the President ordered the new Reservation exactly as proposed and sketched out for him, the proposition and sketch illustrate and in effect form a part of the President's order. He had the power to reserve what he thought proper, without any reference to what was or had at any time theretofore been considered the boundaries of the Presidio; and he did reserve exactly what the Engineer Department, through Gen. Totter, proposed, advised and delineated by red lines on the sketch referred to. Nothing more and nothing less?

The Presidio tract, so sketched and so reserved, making its southern boundary coincident, as far as it runs, with a straight line from the southern point of Point Jose Reservation to the southern extremity of Mountain Lake, is the same as fixed and laid down by the U. S. Surveyor-General and by the San Francisco City and County municipal authorities. Such being the fact, are we not justified in saying that it is doubtful whether the Presidio Reservation, properly speaking, ever embraced the lots in question? Are we not justified in adding that the Reservation as established by the President in 1851 -- and there has since been no authoritative order changing it since -- certainly did not embrace them?

## II.

IF THE RESERVATION EVER DID EMBRACE THE SAID LOTS, THEY WERE AFTERWARDS EXCLUDED, AND SO TREATED BY COMPETENT UNITED STATES AUTHORITIES.

Under this head we beg leave to call the attention of your Hon. Body to the fact that, as far as can be ascertained, there never was any survey of the Presidio tract until that made



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by the U. S. Surveyor-General in 1866. Among the records in the office of the U. S. Surveyor-General for California, we find a number of papers relating to the subject, as follows:

April 9, 1853, U. S. Surveyor-General King of California writes to Commissioner Wilson of the General Land office, that it was impracticable from information received to ascertain the precise lines of the Presidio Reservation which he had been directed to run and asking to be "furnished with such a precise description of the tract intended to be reserved as might enable him to have a survey made in conformity to the intention of the Executive in making that Reservation."

April 25, 1853, Gen. Totten writes to Commissioner Wilson, in answer to inquiries, enclosing the President's order of December 21, 1851, and adding that the original order of the President had been "transmitted to his (Commissioner Wilson's) office."

June 21, 1853, Surveyor-General King writes to Commissioner Wilson that he had received a copy of the foregoing letter, "with a tracing, therein referred to as showing the tracts on the south side of the entrance to the harbor of San Francisco directed to be reserved by the President's order of the 21st December, 1851, modifying his order of 6th of November, 1850."

Nothing further appears to have been done, although the Surveyor-General expressed his willingness to make a survey whenever required, until --

June 7, 1864, Commissioner Edmunds of the General Land Office writes to U. S. Surveyor-General Upson of California,, enclosing the President's order of 1851 and a copy of Gen. Tottens sketch or diagram, and directing a survey to be made.

September 6, 1864, December 13, 1864; February 15, 1865, and July 16, 1865 -- second, third, fourth and fifth letters from Commissioner Edmunds to Surveyor-General Upson on the same subject.

June 16, 1865, John H. Saunders, City and County Attorney of San Francisco, writes to Surveyor-General Upson, enclosing the final decree in the Pueblo case and asking for an early survey of the Pueblo.

August 18, 1865, Surveyor-General Upson directs James T. Stratton, the present U. S. Surveyor-General, then Deputy, to make a survey of the Pueblo of San Francisco.

February 27, 1866, Surveyor-General Upson directs Mr. Stratton to survey the Presidio Reservation, &c., and orders him to be governed strictly by accompanying certified documents from the General Land Office, &c., among which was Gen. Totten's sketch or diagram.

March 21, 1866, Gen. McDowell, Commanding Department of California, is given notice of Mr. Stratton's appointment to make the Reservation survey.

March 23, 1866, Adjutant General Drum writes to Surveyor-General that a detail of enlisted men ready to assist Mr. Stratton in his survey, whenever required.

April 27, 1866, Mr. Stratton makes his report as fol-







lows:

"San Francisco, Cal., April 27, 1866.

L. Upson, Esq., U. S. Surveyor-General for the State of California:

Sir:- In obedience to your instructions to me, dated February 27, 1866, for the survey of the Military Reservations in San Francisco County, as soon as I had finished the work in hand, on the morning of March 23, before commencing the survey, I reported myself to the Commanding Officer at Point San Jose, Major Bowman, as requested by Col. Drum.

I intended to have first consulted the Commanding General, Gen. McDowell, in relation to the proposed survey and for that purpose called at his quarters at about 8 A. M., before reporting to Major Bowman; but he had not yet arisen, and I could only leave my name, official position, and mission.

With Major Bowman I held a lengthy conversation and exhibited my instructions, the President's proclamation describing the Reservations, and the certified map thereof from the General Land Office, which were to be my guide in the execution of the work, and explained to him, as fully as my then limited knowledge of the localities extended my proposed plans of survey and informed him that I had been directed by your chief clerk, Mr. Conway, to run any lines the Military Department might wish, in addition to those I might establish under my instructions.

The certified map to which I have referred represents the Point San Jose Reservation as being bounded by three right lines on the easterly, southerly and westerly sides at distances of about 800 yards from the northern extremity of the point, while the written description limits the same boundary to "not less than 800 yards from" the same point.

Under this description, there could have been included a margin outside of the 800 yards, had it been deemed necessary for military purposes, and which I suggested could be done if he (Major Bowman) so desired it; but he answered that his Department did not wish to have included in the Reservation any more than the minimum quantity designated in the official descriptions, and directed me to survey for its southerly boundary an arc of a circle 800 yards radius from the extremity of the point, the field notes of which I return to you.

Both the map and the written description clearly represent the Presidio Reservation as being bounded on the south by a straight line from the southern extremity of Mountain Lake towards a point 800 yards due south of the northern extremity of Point San Jose; and as this line was described thus unmistakably in both documents, I established the southerly boundary of this Reservation in accordance therewith, believing that the same rule should be adhered to in this case as in surveying private land claims, viz: to follow strictly all specifically described lines.

As before stated, I began the survey on March 23d by establishing an initial point in the arc around the Point San Jose Reservation, Major Bowman offered me kindly a detail of men, should I need them in my work; but I replied that I would be occupied during the first two or three days in establishing initial points, retracing township lines &c., and should not want them; and on the 26th, having established the position of the corner monuments of the southern boundary of the Presidio Reservation,



1. The first of these is the question of the

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9. The ninth is the question of the



I, in person, notified Major Allen, Commanding the Post, who expressed the same gratification that Major Bowman did, viz: that the lines of the Reserves would at last be officially surveyed and settled.

I asked as to the detail of men, referred to in the communications from the military department to your office and I presumed from my instructions to be furnished for the purpose of placing more conspicuous monuments on the lines between the corners, and whom I supposed would have orders or an officer to direct them what to do upon my showing the lines. Soon after our interview, on going upon the ground, I found the men together with several citizens and lumber on wagons at different points.

The correct line of the Reservation, as I had established it, was then pointed out by me; after which I proceeded with my surveying duties. On the 28th I went again to the Point San Jose Reservation for the purpose of completing the survey of the proposed arc for the southern boundary; but Major Bowman requested me to defer it for a few days, as, in consequence of some changes that were being made in the disposition of the garrison, he would not be able to attend to it.

About two weeks afterwards I completed the work, and now hold myself in readiness to show the military Department the boundaries, whenever they may desire to know them. I also return to you the field notes of the swamp and tide-lands within the Presidio Reservation as segregated by the State agent, the County Surveyor of San Francisco County, and claimed by purchasers of title from the State, who have requested me to attach them to my survey of the Reservation as an exhibit.

The land is of the same general character as the other marsh and tide-lands along the ocean and around the Bay of San Francisco, and are mostly overflowed at ordinary high-tide.

Very respectfully,

James T. Stratton,  
U. S. Deputy Surveyor.

Official: R. C. Drum, Asst. Adj't. General."

It thus appears that the U. S. Surveyor-General, in officially running the lines as above indicated, did so in exact compliance with the instructions sent out from the authorities at Washington. As a part of those instructions, he was sent a traced copy of Gen. Totten's sketch or plat, certified by Commissioner Edmunds, from the records of the General Land Office -- being the identical sketch upon and in accordance with which the President made the Reservation, as before stated. It is this certified traced copy (now on file in the Surveyor-General's office, and reproduced as the frontispiece of this Memorial) to which Mr. Stratton refers in his report as "the certified map thereof from the General Land Office" and which was ordered to be his guide. He exhibited it to Major Bowman and explained to him the proposed plan of survey, to all of which Major Bowman assented. Afterwards, when Mr. Stratton had "established the position of the corner monuments of the southern boundary of the Presidio Reservation" and in person pointed them out, both Major Bowman and Major Allen approved them and expressed their satisfaction that the lines of the Reservations would thus at last be officially surveyed and settled. They thereby, for themselves and for Gen. McDowell, whom they represented, virtually recognized the correctness of and approved Mr. Stratton's lines and







survey, as far as it was possible to approve them.

In saying, then, that the lots in question, if they were ever embraced in the Reservation, were afterwards excluded and so treated by competent United States authorities, we appeal for proof to the foregoing official documents and what they show to have been the case.

Whenever any information was desired from the proper and competent authorities at Washington as to the lines of the Reservation, there was in substance one, invariable, answer: "Gen. Totten's sketch". The President followed it. The Engineer and Land Office Departments followed it. The Surveyor-General followed it. The U. S. Military Authorities at San Francisco followed it -- in fact aided and assisted in making the survey in accordance with it.

And we may here add that in the same year 1866 the U. S. Surveyor-General, in making his official survey of the Pueblo of San Francisco, treated that sketch as correct and followed it. To this last survey the City and County of San Francisco was, in contemplation of law, a party; and the survey, as then made, became, if we mistake not, a sort of executed official act in the nature of a contract between the parties, which could not, or at least ought not, to have been changed without notice to the City and County and its grantees and giving them an opportunity to be heard. The City and County procured those surveys of the U. S. Surveyor-General and in accordance with them prepared its own official map, projected its streets, delineated its lands, and sold and received the price and taxes therefor, as before stated -- and all this several years after Mr. Stratton's surveys and maps and year or two before any objection was made to the lines as established by him.

### III.

The alteration in 1870 of the Reservation lines, established by the U. S. Surveyor-General in 1866, so as to make the new lines include the said lots, was unjust and inequitable.

Mr. Stratton's surveys and maps were made in 1866, and it was not until 1869, so far as we know or as appears from documentary evidence at hand, that any objection was made. By that time there had been a change in the military authorities at San Francisco, and also a change in the General Land Office at Washington; and it is more than likely that the new officers were not as conversant with all the facts and equities of the case as the old ones had been. The only documents we find on file bearing upon this branch of the subject are:

January 8, 1869, Commissioner Jos. S. Wilson writes to U. S. Surveyor-General Day of California that objections were made by the Military to Mr. Stratton's survey, claiming that the southeastern corner of the Presidio tract (as they understood it, of course,) had been ignored by him. There is no request, however, for Mr. Day to make a new survey.

February 3, 1870; Special Order No. 22 from Headquarters, Department of California, ordering Lieut. G. M. Wheeler "to make a resurvey of the Presidio Reservation, running the lines in accordance with the Proclamation of the President of the United States, dated December 21, 1851, and continuing the same to deep water, so as to fulfill the intentions of the recommendation contained in the letter of the Department Commander to the Adjutant General, dated December 15, 1869, which was approved by the Secretary of War."







June 28, 1870, Lieut. Wheeler makes his report as follows:

Engineer Office Head Quarters,  
Department of California,  
San Francisco, California, June 28th, 1870.

Colonel John P. Sherburne, Ass't. Adjutant General. H'd. Q'rs.  
Department of California.

Colonel: I have the honor to forward herewith two lithographed copies of the late detailed survey of the Military Reservation at the Presidio of San Francisco, California, made in accordance with instructions contained in special order No. 22, Head Quarters Department of California, February 3, 1870; also, two copies of a map showing on an enlarged scale a plan of the government buildings at Presidio are herewith forwarded. Great care has been exercised in the field work which has been concluded by and under the direction of Lieut. R. H. Savage, U. S. Engineers, especially in the accuracy of the survey along the southern line from the southeast corner to the mouth of Lobos Creek on the ocean beach, upon which line the limits of the reservation are based as will be seen by referring to a letter from Jos. G. Totten, Bvt. Brig. General of Engineers, to HON. C. M. Conrad, Secretary of War, October 28, 1851, containing recommendations upon which the President's order of December 21, 1851, was based for the changing of the Reservation as ordered to be set aside by Executive authority, November 6, 1850.

The description is somewhat vague as regards that part of the boundary which traverses Mountain Lake. The words describing the limits are as follows: "The land north of a line running in a westerly direction from the southeastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and north and east of a line passing through the middle of said pond and its outlet to the channel of entrance from the ocean."

The southeast corner was located under my direction in 1868, and at a point designated and sworn to by E. D. Keyes and Milo Hoadley; and the point so determined has been considered as the initial point of the present survey.

The middle point of a lake may be looked upon as a point of doubtful locality; if it had been referred to as the center point of the surface of the Lake at ordinary low water its position might be determined with more accuracy. To follow as far as possible what is supposed to have been the true spirit of the description, the point midway on a meridian line through the most southerly point has been taken, and the line joining the southern and this point in connection with the line from the middle point so assumed to the outlet of the lake are taken as that part of the southern boundary line that traverses Mountain Lake, so called.

The outlet to this lake has long since been closed up; and the Company known as Spring Valley Water Works have an iron pipe running through a tunnel and following pretty generally the direction of the old outlet, as I am informed, for a distance of nearly 500 feet, coming to what appears as the source of Lobos Creek, showing itself as a small spring; thence the center of Lobos Creek to the ocean is taken as the remainder of the southern boundary.







The specialty of this survey consisting in its continuation to ship's channel or deep water, the curve of twenty-four feet has been so assumed; and this curve as taken from the U. S. Coast Survey Hydrographic sheet has been joined to the present land survey. I have been unable to find any authority defining exactly what shall be used as the deep water line. The custom of the coast surveys has been it is believed to limit it to 18 feet in depth. The statutes of the State of California recognize the 24 foot curve as the limitary line and the state have so disposed of tide lands by virtue of the different legislative acts. Since this reserve borders upon tide lands constructively claimed by the executive portion of the State Government of California, it has been considered advisable to carry the late survey to cover as great an area as would be liable to be covered by the blocks of land in case a sale of these tide lands should be attempted by the state.

The area has been calculated to embrace both arable and marsh land lying north of the southern boundary and limited by high water line.

The principal lines of the survey have been run by Lieut. Savage in person, while Lieut. Lyle was attending to the details of buildings and typography. The area has been obtained by the use of the solar planimeter, which, from repeated trials, has been found to give remarkable accurate results. It will be noticed that the supply of water on the reserve other than that coming from Mountain Lake and Lobos Creek is very small, while from these sources the supply can be received only from the works of the Spring Valley Water Company. From the peculiar direction given to the southern boundary line, it will appear that private parties are allowed a frontage on the southern bank of the Lake, and I am informed that the land adjoining is the property of the above-mentioned incorporation.

Respectfully submitted  
George M. Wheeler,  
Lieut. of Engineers.

The reading of Lieut. Wheeler's report suggests several reflections. In the first place, it seems to have been only a private survey. We are not aware that the Commanding General, Department of California, had any official authority to order a survey, which could affect lands claimed by private parties or change lines fixed by the U. S. Surveyor General. Nor are we aware that Lieut. Wheeler occupied any position authorizing him to make a survey. As we understand it, the U. S. Surveyor-General is the proper, and the only competent, authority to make an official survey of public lands. So far at least as determining the boundaries of a Spanish grant, such as the Pueblo, and fixing the line of demarkation (sic) between it and the public land is concerned, we have always supposed that the Surveyor-General was the only officer designated by law; and that in case of alleged error in his lines, the error -- after being properly determined -- was remitted back, not to a military or private surveyor, but to the Surveyor-General himself, for correction. In such case, the parties whose interests were to be involved by the correction of the error, were in contemplation of law affected with notice of the proceedings and afforded an opportunity to be heard. (See Act of Congress of July 1, 1864; 13 U. S. Statutes at Large, 332.) But in the case of the survey of Lieut. Wheeler under consideration, not only was there no notice to the City or County or to its grantees; but it appears that notice to them would not have afforded an opportunity to be heard. The report



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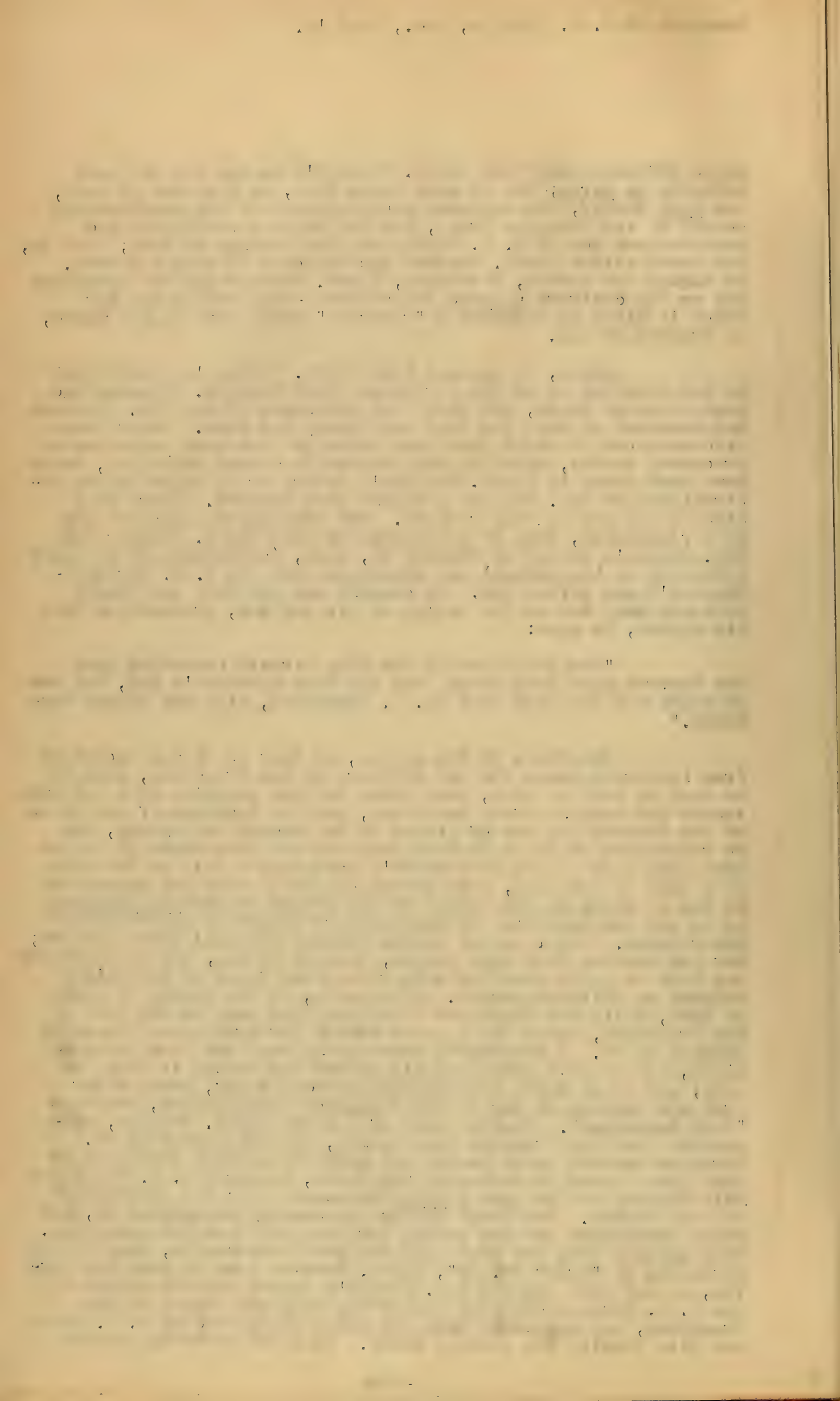
shows affirmatively that Lieut. Wheeler's survey was not only entirely ex parte; but it also shows that, as a matter of fact, the real survey, the supposed ascertainment of the southeastern corner of the Presidio tract, was the private unofficial and unauthorized Act of E. D. Keyes and Milo Hoadley in 1868; that is, two years before Lieut. Wheeler was directed to make a survey. In making his survey, therefore, Lieut. Wheeler did not ascertain but on the contrary assumed the corner -- the very point for which it might be supposed a "resurvey" would have been ordered, if ordered at all.

Again, it appears from Lieut. Wheeler's report that he was directed to do the very same thing that Mr. Stratton had been directed to do, and with full knowledge of what Mr. Stratton had done and of what the City and County had done. Under these circumstances it might have been expected that some reference to proceeding action, which it was desired to change and alter, would have been found in Lieut. Wheeler's report or at least in the instructions to him. But not a single word appears. There is a studied silence in this respect. And this silence appears the more remarkable, when it is considered that Lieut. Wheeler had Gen. Totten's letter of October 28, 1851, (containing or at least referring to the sketch) and doubtless also the U. S. Surveyor-General's map before him. He clearly had the City and County official map, for on the margin of his own map, transmitted with his report, he says:

"The positions of the City streets bordering upon the Reserve have been taken from the City Surveyor's map, the use of which was obtained from Wm. P. Humphreys, City and County Surveyor."

The facts of the matter, as near as we can ascertain from inquiries among the old settlers of San Francisco, seem to be that in 1852 or 1853, when lands in that vicinity were entirely vacant and comparatively worthless, and the location of the lines of the Reservation was of little or no concern to anybody, and no resistance would or in fact could in the then state of titles have been made to the Government's occupying a mile or two more or a mile or two less, some person -- and it does not appear who he was -- stuck an old cannon in the ground on what he supposed to be the southern line or southeastern corner of the Presidio Reservation. There was of course nothing official about the act; for the reasons that such person, whoever he was, had no authority and that no point could be authoritatively fixed or determined without an official survey. Afterwards, in the spring or summer of 1856, while the Vigilance Committee held sway in the City of San Francisco, there was a great demand for arms among the party opposed to it. A detachment accordingly went out into the sand hills, dug up that identical old cannon and hauled it into the city; and it no doubt subsequently found its way, among other arms and engines of war to the Vigilance Headquarters, known as "Fort Gunnybags". Twelve years afterwards Lieut. Wheeler, conceiving that the Presidio Reservation, as established by Mr. Stratton was not large enough and with the evident intention at that time formed of extending its lines, procured E. D. Keyes and Milo Hoadley to fix upon a point supposed to be the position of the old cannon. The whole matter was clearly determined on, and every subsequent act was merely carrying out that determination. This appears from the fact that two years afterwards, when at the direction of "Order No. 22", Lieut. Wheeler came to make his survey, he not only ignored Gen. Totten's sketch and the action of the U. S. Surveyor-General and of the City and County of San Francisco, but expressly made the point designated by E. D. Keyes and Milo Hoadley his initial point. In other words he assumed







the matter in dispute and made it the basis of all his action.

Now, if Lieut. Wheeler had any authority to fix a line different from that officially fixed by the Surveyor-General, he had a right to fix any other line, taking in still more land. If the approval of his survey by the Commissioner of the Land Office could make it valid, the Reservation might have been extended so as to take in a section or two more, instead of the hundred acres extra which the new lines did take in; and the survey and its approval being as we said entirely ex parte, no objections could have been made or would have been entertained. In this view of the case -- and we submit that it is the logical view -- no order or proclamation of the President or Act of Congress would be required to make a Reservation. In this view it would also follow that the City and County of San Francisco and its grantees might and would be deprived of their lands without compensation, without process of law, and without a possibility of being heard. Would not this be -- is it not Unjust and inequitable?

We have thus stated the circumstances, so far as we can ascertain them; under which the southern line of the Reservation was extended so as to include the lots in question. The real object or the advantage to be gained to the Government, we are unable to ascertain. We cannot see what use or purpose the Government can put the land to. It could hardly be for the purpose of planting ordinance, because it is too far from the shore; and even Lieut. Wheeler, while decorating his map with a large number of imaginary forts, redoubts and batteries, does not place any of them near it. It could not be for the purpose of barracks or parade for besides being remote it is broken up with ravines. It could hardly be for the purpose of renting to the dairymen of the vicinity for the pasture of their cows, because it is mostly if not entirely sandy, grassless, and unfit for cultivation. In view of these facts and of the very large extent of the Reservation without it -- the greater portion of which never has been and is not likely to be put to any practical use -- it seems to us that we are justified in saying that the Government has no need of any land outside of Mr. Stratton's survey. The only practical use it can be put to is to build private residences and such expensive improvements as will be made by persons having the fee of the land.

In conclusion, we ask of your Hon. Body, a favorable consideration of the premises. We ask that the lots, for which we have paid and received deeds as aforesaid, may be assured to us. And we further, on behalf of the City and County of San Francisco as well as of ourselves, ask that the portion of the Public Park at Mountain Lake, excluded from the Reservation by Mr. Stratton's survey and included by Lieut. Wheeler's, may be released to the City and County. Let it be at once improved and adorned, as proposed and directed by the present Legislature of California.

All of which is respectfully submitted.

Theodore H. Hittell,  
Counsel for S. M. Tibbitt,  
A. M. Simpson,  
and many others.

San Francisco, January 30, 1874.



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CHAP. 93.-- AN ACT TO RELINQUISH THE INTERESTS OF THE UNITED STATES IN CERTAIN LANDS TO THE CITY AND COUNTY OF SAN FRANCISCO, IN THE STATE OF CALIFORNIA.

(May 9, 1876.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right and title of the United States to the following-described portion of the military reservation known as the Presidio, or Fort Point reservation, situated in the city and county of San Francisco, State of California, be, and the same are hereby, relinquished to the said city and county, and its successors, assigns, and vendees, for the benefit of persons who, if the said land had not been reserved for public use, would have been entitled thereto under the ordinances numbered eight hundred, of the city of San Francisco, ratified by act of the legislature of said State, approved on the twenty-seventh day of March, eighteen hundred and sixty-eight, entitled "An act to confirm a certain order passed by the board of supervisors of the city of San Francisco", relating to these premises, and being more particularly described as follows: Commencing at the southeasterly corner of the said Presidio, or Fort Point reservation, and thence running in a direct line due north to the shore-line of the Bay of San Francisco; thence westerly along the said shore-line to a point eighty feet west of the easterly line of the said Presidio, or Fort Point reservation, as established by the United States authorities, said eighty feet being relinquished for a public highway, or street, named Lyon street; thence southerly to a point on the southerly line of said reservation, where the west line of Lyon street intersects said line; thence easterly to the point of commencement, to conform as near as possible to the plan of the city-map of streets of San Francisco outside of reservation, said plan being now on file in the office of the War Department of the city of Washington: Provided, That Lyon street shall be extended to the Bay of San Francisco eighty feet wide, and is hereby dedicated for a public highway and street forever: Provided further, That Broadway, Vallejo, Green, Union, Filbert, Greenwich, Lombard, Chestnut, Francisco, Bay, North Point, Jefferson, Tonquin, and Lewis streets as laid down on the official map of the city and county of San Francisco, be extended westerly to intersect the easterly line of Lyon street as herein provided, be, and are hereby, dedicated as public highways and streets forever.

Approved, May 9, 1876.

---oOo---







M E M O R I A L

of

OBED CHART AND OTHERS

for

Relinquishment

Of the Interest of the United States

in certain lands at the

Presidio of San Francisco

to holders of deeds thereof

from the

City and County of San Francisco.

San Francisco

Women's Union Print, 424 Montgomery Street

1874

(8vo. pp. 16)







To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists respectfully submit the following statement of the facts upon which they base their claim to relief from the Congress of the United States.

At the time of the conquest of California on the 8th of July, 1846, and at the date of the Treaty of Guadalupe Hidalgo, July 4th, 1848, the Pueblo of San Francisco was in existence and entitled to four square leagues of land. This has been settled by the decisions of the Supreme Court of California and of Judge Field of the Circuit Court of the United States May 18th, 1865.

It is also clearly settled that within the limits of the Pueblo there was reserved for military purposes, a tract of land known and designated as the "Presidio", and the question presented is, what should be the boundary of the Presidio?

It may be assumed as a fact, which is undisputed, that no plat showing the exact boundaries of the Presidio existed among the archives at the time of the acquisition of California by the United States.

On the 6th of November, 1850, President Fillmore reserved from sale various tracts of land and among others a tract described as follows: "From a point eight hundred yards south of Point Jose to the southern boundary of the Presidio along the southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos."

The next official act in reference to this reservation was a communication dated at Washington, Oct. 28th, 1851, from Jos. G. Totten, Bt. Brig. Gen'l of Engineers to Hon. C. M. Conrad, Secretary of War. He says: "The Surveyor General of California having applied through the General Land Office for some additional instructions to enable him to run the lines of the lands proposed as Government reservations by the Joint Board of Navy and Engineer officers lately on the coast, his application therefor has been referred to this Department.

"It thus appears that some of these reservations have not yet been surveyed and upon referring the subject above mentioned to the Engineer officers of that Board, it would seem desirable to change the limits of one of the reservations from those originally proposed by the Board."

He then recommends the following boundaries: "The Government to reserve the promontory of Point Jose within boundaries not less than 800 yards from its northern extremity, and the land north of a line running in a westerly direction from the southeastern corner of a Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos and north and east of a line passing through the middle of said pond and its outlet to the channel of entrance from the ocean."

He says in concluding: "The sketch herewith shows the reserve as originally proposed and conjecturally drawn by the Board, also the two separate reservations now proposed to be substituted for it." A sketch accompanied this communication which showed the southern boundary of the Presidio Reservation as your memorialists claim it should be.







A fac simile copy of said sketch certified by Commissioner Edmunds is hereto attached.

We next find the following communication from the Secretary of War to the President:

"War Department, Washington, Dec. 30th, 1851.

Sir: I have the honor to submit herewith for your consideration the draught of an order modifying and reducing the reservations at Fort Point and Point Jose, San Francisco Harbor, California, prepared in conformity with the recommendations of the Chief-Engineer, herewith enclosed, and request your approval of the same.

Very respectfully your obt. servt.

C. M. CONRAD.

Secretary of War.

To the President."

Then follows the order of President Fillmore, in accordance with the above recommendations:

"The reservation, including Fort Point, Point Jose, and the Presidio at the entrance of the Harbor of San Francisco, California, made by an order dated November 6th, 1850, is hereby modified and reduced so as to embrace only the following described two tracts of land, viz:

1st. The promontory of Point Jose within boundaries not less than 800 yards from its northern extremity.

2nd. The Presidio tract and Fort Point, embracing all the land north of a line running in a westerly direction from the southeastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos and passing through the middle of said pond and its outlet to the channel of entrance from the ocean.

Millard Fillmore.

Executive Chamber,

Washington, December 21st, 1851."

On June the 27th, 1864, J. M. Edmunds, Commissioner of the General Land Office, directed a survey to be made of the Presidio Reservation, and in his communication to Surveyor General Upson used the following language:

"Your office was advised of the original order of the President on the 24th of June, 1851. The diagram and order of Dec 21st, 1851, reducing the reservation were transmitted to the Department of the Interior, but were not received at this office until the 17th of June, 1855. Meantime, in response to Surveyor-General's letter April 9th, 1853, asking for a description of the Reservation this office obtained from Gen. Totten a diagram and letter defining the boundaries, which were forwarded with our letter of the 7th of May following. A copy of the President's order modifying the Reservation and a copy of the diagram transmitted by the War Department through the Department of the Interior of this office are herewith enclosed."

On February 27th, 1866, L. Upson, U.S. Surveyor General, appointed James T. Stratton, Esq., his deputy "to run the exterior lines of the Military Reservations within the Pueblo limits of San Francisco, preliminary to a survey of the Pueblo lands," (the City and County of San Francisco having applied to the Surveyor-General for that purpose.) The Surveyor-General says in his instructions to Mr. Stratton. "You will be governed strictly by the accompanying certified documents from the General Land Office."

On the 27th of April, 1866, Mr. Stratton made his report to the Surveyor General. He says: "With Major Bowman I held a lengthy conversation, exhibited my instructions, the President's proclamation describing the reservations and the certified map thereof from the General Land office, which were to be my guide in the execution of the work." He further says: "Both the map and the







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written description clearly represent the Presidio Reservation as being bounded on the south by a straight line from the southern extremity of Mountain Lake towards a point 800 yards due south of the northern extremity of Point San Jose, and as this line was described thus unmistakably in both documents I established the southerly boundary of this reservation in accordance therewith." He accompanied his report with a plat and the field notes. Upon the plat appears the following approval:

"The field notes of the military reservations of the Presidio and Point San Jose, from which this plat has been made out, have been examined and approved and are on file in this office, U.S. Surveyor General's Office, San Francisco, California, September 15th, 1866.

L. Upson,  
U.S. Surv.Gen. Cal."

The full report of Mr. Stratton will accompany this Memorial.

A certified copy of the above-mentioned plat was made at the office of the U.S. Surveyor General and in accordance with and upon the faith of it the southerly line of the Presidio Reservation was drawn upon the official map of the City and County of San Francisco. A section of this map showing the various lines, tracts, blocks, streets, &c. (Mr. Stratton's survey is yellow lines and Lieut. Wheeler's is red.) signed by Mr. Humphreys, City and County Surveyor, is hereto attached. The computed area of the Reservation as fixed by Mr. Stratton is 1.382 22/100 acres.

The lands for which your memorialists ask the interposition of Congress in their favor are all included in the strip which was excluded from the Presidio Reservation by Mr. Stratton's survey but included therein by Lieut. Wheeler's, and all south of "a straight line from the southern extremity of Mountain Lake towards a point 800 yards due south of the northern extremity of Point San Jose."

On the 8th of March, 1866, "for the purpose of ending the litigation and settling the title" to these outside lands Congress passed an Act relinquishing to the City of San Francisco the lands described in the decision of Judge Field, May 18th, 1863, "in trust to be conveyed to the parties in possession, "subject to the direction of the Legislature of California, as to terms, conditions and quantities." Copies of Judge Field's decision, the Act of Congress and the Act of the Legislature will be found attached hereto. It was soon after the passage of the Act of Congress referred to that Mr. Stratton was instructed to survey the reservations, and the survey made by him, approved by the U.S. Surveyor General, as aforesaid, remained the official record for nearly six years. It was accepted and acted on by the City and County of San Francisco as final, and its whole system of blocks and streets was laid out and in accordance therewith. It (that survey) entered into and became a part of the plan of disposing of all the outside lands relinquished to the City of San Francisco by said Act of Congress. Upon the basis of that survey the said lands were appraised by the City of San Francisco at a valuation of over twelve millions of dollars.

Reservations for public parks, cemetery, school lots, &c. as provided by the Act of Congress, were made, amounting to over 1300 acres in area and \$1,297,000 in valuation, and said amount was assessed upon the lands of said Pueblo, known as "Outside Lands."

"The lands above referred to as excluded by Mr. Stratton's survey and included by Lieut. Wheeler's and in reference to which we ask relief, were assessed in proportion with others, and your memorialists have paid such assessments to the amount of 10 73/100 per cent upon each \$100 of valuation. That appraisement was made upon a basis of at least double the present actual cash value of the lands, and your memorialists have paid, in addition thereto, back





taxes for the five years predecing 1866, as provided in the plan of disposition referred to, and six years's taxes since then, amounting to eleven years of taxation upon the said lands, which with interest from date of payment amount to nearly the full value of said lands in addition to the original price.

The City and County of San Francisco passed Ordinances intended to convey the title to these lands as well as others within the Pueblo in accordance with the Act of Congress. A copy of the Ordinance bearing upon the subject will be found attached hereto,

The City and County of San Francisco also caused an official map to be prepared and filed, which map has ever since been and is now known as the official map of said City and County, and upon that map these lands are delineated as municipal lands, and if the said survey was not correct, the whole adjustment of title to the outside lands was inaccurate, illegal and unjust. A certified copy of said map will accompany this memorial.

Moreover the said City and County paid to the U.S. Surveyor General the sum of \$2,500 as the cost of the survey by Mr. Stratton.

When it is remembered that the survey thus made by its own officers was acquiesced in by the Government for nearly six years (the period of the Statute of Limitations in California as to real estate being only five years) and that during that period this land was treated upon the faith ~~that~~ of that survey by the City and County of San Francisco as a part of the lands conveyed to it by Congress, divided by it into lots and blocks, assessed hereby for parks, revenue purposes, &c, and conveyed to your memorialists by said City and County upon the payment of heavy charges by them, the justice of their claim cannot will be denied.

The good faith of the City and County of San Francisco with reference to its proceedings in this behalf is evidenced by the fact that it reserved for a Park at Mountain Lake and for school lots lands within the bounds of the Presidio Reservation as surveyed by Lieut. Wheeler, which lands are in exactly the same condition as the lands claimed by your memorialists.

And, finally, said City and County in accordance with said Act of Congress of the Ordinances of the City and County and of the Acts of the Legislature of California, have made deeds of said lands to your memorialists.

Your memorialists upon the faith of Mr. Stratton's survey and believing it to be the final and official survey of said lands acquired their title theretp in good faith and paid the taxes and assessments as aforesaid.

WHEREFORE your memorialists pray for consideration and equitable relief.

Emil Rohte  
Mrs. L. R. White  
S. C. Armstrong  
Edward Carlson  
Chas. Haake  
S. P. Kimball  
Louis Sloss  
S. F. Savings & Loan Society  
S. C. Armstrong and others

Obed Chart  
George Hearst  
Wm. H. Rouse  
Wm. Bihler  
J. De Forest  
Geo. W. McNear  
H. L. Van Wyck





## APPENDIX.

Final decree confirming the claim of the City and County of San Francisco to its Pueblo Lands, Entered May 18, 1865.

(See Mun.Rept. 1867-8. p.552)

### Grant by Congress.

Chap. XIII.-- An Act to Quiet the Title to Certain Lands Within the Corporate Limits of the City of San Francisco.  
(approved, March 8, 1866)

(See Mun.Rept. 1867-8. pp.552-3)

An Act  
to confirm a certain order passed by the Board of Supervisors of the City and County of San Francisco.  
(approved March 27, 1868)

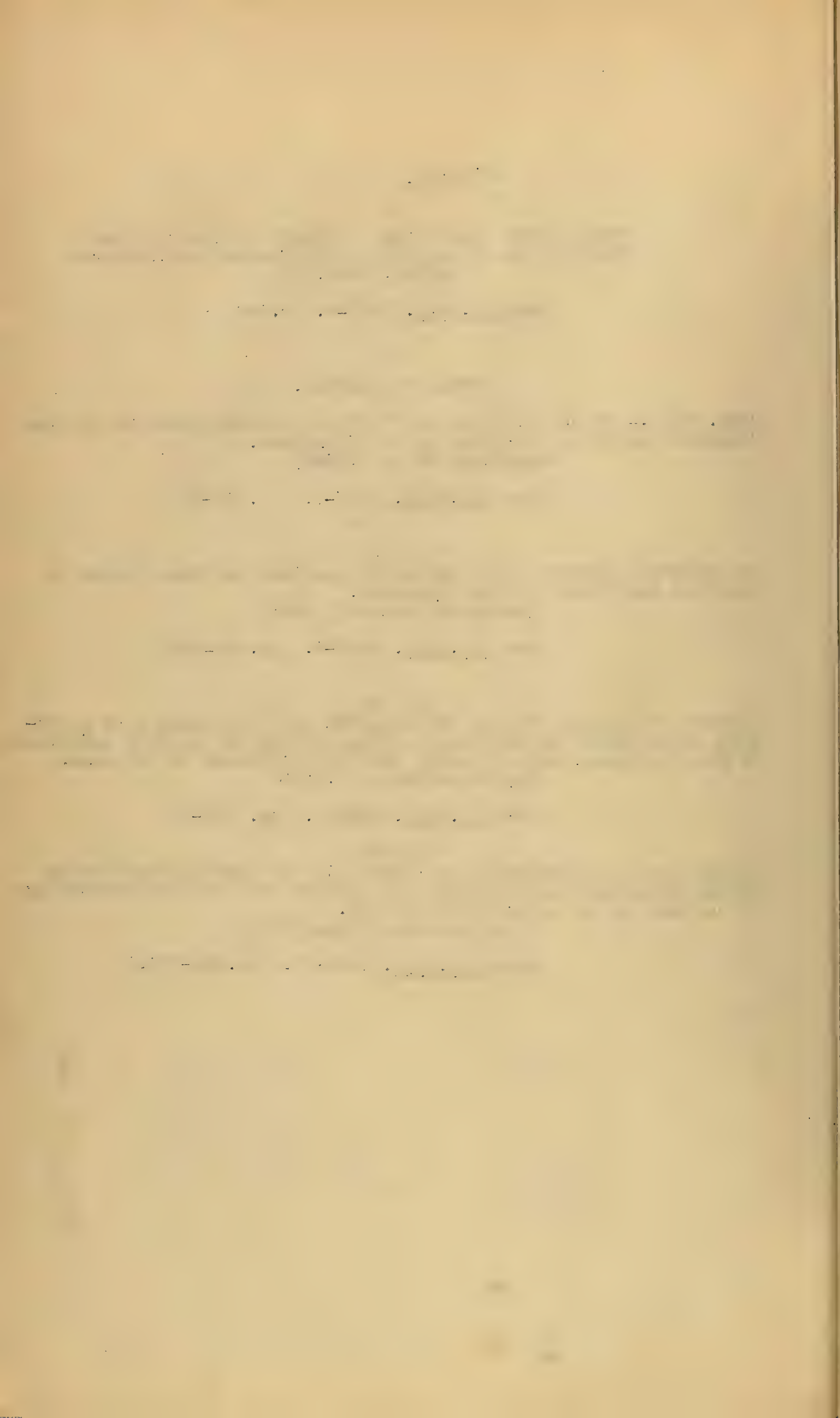
(See Mun.Rept. 1867-8. pp.555-558)

An Act  
further to provide for the ratification and confirmation of a certain order passed by the Board of Supervisors of the City and County of San Francisco, and to modify certain provisions of the same.  
(approved March 27, 1868)

(See Mun.Rept. 1867-8. pp. 558-9)

An Act  
to expedite the settlement of Land Titles in the City and County of San Francisco and to ratify and confirm the Acts and Proceedings of certain of the authorities thereof.  
(approved March 14, 1870)

(See Mun.Rept. 1869-70. pp.580-585.)





BEFORE THE GENERAL LAND OFFICE OF THE UNITED STATES.

-oOo-

The City of San Francisco, )  
                                  )  
                  - vs.-        )  
                                  )  
The United States.            )  
                                  )

-oOo-

ARGUMENT OF ENG. B. DRAKE AND C. R. GREATHOUSE,  
AGAINST THE STRATTON SURVEY.

(San Francisco ca. 1877)

pp. 47. 8.10

ARGUMENT OF ENG. B. DRAKE AND C. R. GREATHOUSE  
FOR CLAIMANTS, UNDER THE CITY OF SAN FRANCISCO, AGAINST THE  
STRATTON SURVEY.

We claim that the survey of the Pueblo lands of San Francisco and the Presidio reservation, made by Jas. T. Stratton, Deputy U. S. Surveyor, should be set aside, and a new one ordered which will include as city lands all the Northern portion of the Pueblo except such lands as were actually occupied by the Mexican Government as a Presidio or military barracks, on the 7th day of July, 1846.

Such Survey would give the United States more than it is entitled in law, for, as a matter of fact the Presidio so called, had been entirely abolished long prior to that time, and was, as early as 1834, supplanted by the establishment and organization of the Pueblo of San Francisco by the Mexican authorities.

This Pueblo, under the laws of Mexico, became invested with the title to the whole of the peninsula within the boundaries mentioned in the decree in this case.

The government of Spain never claimed any title or interest in the Pueblo lands after the year A. D. 1791. Vide Dwinelle's Col. Hist. of San Francisco, p. 33 (sec. 44).

Nor did the Mexican Government make any claim there-to after the 3d day of November, 1834. Vide, Hart v. Burnett, 15, Cal. on p. 540.

The old barracks (Presidio) and old Fort (Castillio) (sic) at Fort Point, were entirely deserted and abandoned by the Mexican authorities long prior to July, 1846. They are mentioned in the public writings of travelers, and also by the Mexicans themselves, as the "ruins" of the "old Presidio" and "Castillo".

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"Lieutenant Wilkes who visited San Francisco with his exploring expedition in 1841, says: After passing through the entrance of the Bay, we were scarcely able to distinguish the Presidio; and had it not been for its solitary flagstaff, we could not have ascertained its situation. From the flagstaff no flag floated; the building was deserted, the walls had fallen to decay; the guns were dismounted, and everything around it lay quiet."

"DeMofras writing in 1842 -- although his first and probably his only visit to the Presidio was in 1840 -- writes: The Presidio of San Francisco is in ruins, and completely disarmed. It is inhabited only by a sub-lieutenant and five farmer soldiers and their families. From this condition of ruin and abandonment (the italics are ours) the Presidio never recovered until after the Anglo-American conquest." Dwinelle's Col. Hist. of San Francisco, p. 106."

In the petition of Henry Fitch and Francisco Guerrero to the Governor of the Mexican department of California, dated 13th of May, 1846, for the grant of a mill-site at the Presidio, the place is described as being vacant, and the certificate or report of Jose de Jesus Noe, as Justice of the Peace, or Juez de Paz, shows also that the land was then vacant, to wit: on the 13th of May, 1846. These documents are genuine, and are published in full in the Addenda to Dwinelle's Col. Hist. of San Francisco, p. 95.

Again, Benito Diaz in his petition to the Governor of Californor, (sic) in April, 1845, asking for a grant of Point Lobos and adjoining lands, describes the Presidio as being in ruins. This petition is given in full in the Addenda to Dwinelle's Col. Hist., p. 101.

And there are doubtless hundreds of people now living who can truthfully attest the fact, that long prior to July, 1846, the Presidio barracks and Fort had been abandoned by the Mexican Government.

# I.

## THE LAND IN QUESTION BELONGED TO THE PUEBLO.

We contend that upon the conquest of the country on the 7th of July, 1846, San Francisco, was an existing town (Pueblo) within the meaning of the 14th Section of the Act of Congress of March 3d 1851, and was entitled to have and did have, own and possess, subject to certain trusts, four square leagues of land within the said boundaries; no part ever passed to the United States, nor could the same by any part thereof be taken, either by the President or the Congress of the United States, for public purposes, without compensation and due process of law.

At that time -- July 1846 -- the United States found the whole of the extreme upper portion of the peninsula in the actual possession of the Pueblo authorities, except, perhaps, the ruins of the old Presidio buildings and Fort, all of which would not cover an area of more than 20 acres; and, also, excepting such tracts of land as had been theretofore granted to citizens of Mexico by the civil authorities.

Under the treaty the United States became possessed of only two classes of titles to lands in California, namely:

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The Effect of the Diet on the Blood Pressure in Normal and Hypertensive Subjects



First.-- Title to all lands then belonging, unconditionally, in fee simple, to the Mexican Government; and

Second.-- A qualified title to all lands which had been theretofore granted in private ownership or to corporations, the titles to which were inchoate, subject to the right of the grantees thereof, to confirmation by the United States. These Mexican grantees held an imperfect title, so to speak, to their lands; and it was the duty of the United States to give them a perfect title.

Teschemacher v. Thompson, 18 Cal., 12.  
Estrada v. Murphy, 19 Cal., 248.

Gardner v. Miller, 47 Cal., 570.  
Fremont v. United States, 17 How.  
(U. S.) 545.

All titles which were absolutely perfect at the time of the cession of California, were not affected by the change of Governments; and, as was held by Mr. Justice Field in Teschemacher v. Thompson, 18 Cal. 12: "By the law of nations, independent of "treaty stipulations, the cession of territory from one government to another does not impair the rights of the inhabitants "to their property. - - - - - Public property and the "sovereignty over the territory are only considered as passing "by the cession."

(Citing United States v. Percheman, 7 Pet. 86.)

"When, therefore, California was ceded to the United States, the "rights of property of its citizens remained unchanged."

We insist that the pueblo title to the land in controversy was:

First.-- A perfect legal title on the 7th July, 1846; or

Second.-- If the title required confirmation that it was fully confirmed, and granted, unconditionally, to the city of San Francisco, by the 14th Section of the Act of Congress of March 3d, 1851, which grant took effect as of the 7th of July, 1846; and,

Third.-- Even if the title was imperfect, still the city's right to the whole of the lands was such, that the United States were, and are, bound to preserve it intact.

These rights embrace all of the lands bounded on the north and east by the Bay of San Francisco, on the west by the Pacific Ocean, and by a line on the south running from the Bay to the Ocean so as to enclose four square leagues, excepting private grants made pursuant to Mexican law and the old Presidio Fort and Barracks, as actually occupied and used by the Mexican Government.

The remainder could not be taken under any pretense, or for any purpose, without compensation or due process of law.

As was held in the case of the United States v. Moreno, 1 Wall. 400: "The cession of California to the United





"States did not impair the rights of private property. These  
"were consecrated by the laws of nations, and protected by the  
"treaty of Guadalupe Hidalgo. The Act of March 3d, 1851, to  
"settle private land claims in California was passed to assure  
"to the inhabitants of the ceded territory the benefit of the  
"rights thus secured to them. It recognizes both legal and  
"equitable rights, and should be administered in a liberal  
"spirit." It is also said in Townsend v. Greely, 5 Wall, 326:  
"The treaty of Guadalupe Hidalgo between the United States and  
"Mexico does not divest the pueblo, existing at the site of the  
"City of San Francisco, of any rights of property, or alter the  
"character of the interests it may have held in any lands under  
"the former Government. . . . .

"By the laws of Mexico, in force on the acquisition  
"of the country, pueblos or towns in California were entitled,  
"for their benefit and the benefit of their inhabitants, to the  
"use of lands constituting the site of such pueblos or towns, and  
"of adjoining lands within certain prescribed limits."

Again, in the case of the United States v. Pico, 5  
Wall, 536, the Court say: "A pueblo or town in Mexico, once  
"formed and officially recognized, became entitled, under the  
"laws of that country, to the use of certain lands for its bene-  
"fit and the benefit of its inhabitants, and the lands were,  
"upon petition, set apart and assigned to it by the Government."  
See also Teschemacher v. Thompson, ut supra.

In harmony with these views, and in the case at bar,  
Judge Field, on the 18th day of May, 1865, rendered a final de-  
cree, confirming the title of the City of San Francisco to the  
pueblo lands and embracing therein "so much of the extreme upper  
"portion of the peninsula above ordinary high-water mark (as the  
"same existed at the date of conquest of the country, namely,  
"the seventh of July, 1846,) on which the city of San Francisco  
"is situated, as will contain an area of four square leagues,  
"said tract being bounded on the north and east by the Bay of San  
Francisco, on the west by the Pacific Ocean, and on the south  
"by a due east and west line drawn so as to include the area  
"aforesaid, subject to the following deductions, namely: Such  
"parcels of land as have been heretofore reserved or dedicated  
"to public uses by the United States."

But we claim, (although this is not necessary to  
sustain our case) that the city acquired a perfect title to the  
pueblo lands prior to, and independent of, the decree of Judge  
Field. The lands held by the pueblo, consisted of four square  
leagues, and were, and are bounded on the north and east by the  
Bay of San Francisco; on the west by the Pacific Ocean, and by  
a line on the south running from the Bay of San Francisco to the  
Pacific Ocean. The tract and boundaries of the land, thus grant-  
ed, are definite and certain; and this quantity, by these bound-  
aries, segregated itself from the public domain.

In Dwinelle's Colonial Hist. Sec. 134, it is said:  
"That the conformation of the peninsula of San Francisco is such  
"that there could be only one possible parallel of latitude,  
"which, with the tide-water line surrounding the peninsula,  
"would include the four leagues belonging to the pueblo, and  
"therefore it was not necessary that the line should be actually  
"surveyed.

"Id certum est, quod certum reddi potest.

" But that afterwards the Mexican Government made such





"grants of adjoining lands that there is left for the Pueblo less than the four leagues to which she is entitled, and the superior authorities have thus segregated what is left as belonging to the Pueblo, and so reduced that area to a certainty."

The foregoing limits of the pueblo lands received an early judicial recognition by our Supreme Court in the case of Pane (sic) & Dewey vs. Treadwell, 16 Cal., 220, as follows:

"The question of the boundary lines of the pueblo should not be left to the jury, to be determined by parol proof.

"San Francisco having been constituted, by a public political Act of the former government, a pueblo, Courts will take Judicial notice of its existence, powers and rights, and among these last, its general boundary and jurisdiction!"

"By the instructions referred to in the opinion (the Ordinanzas (sic) de Tierras y Aguas (sic) the point from which the survey of the four square leagues to which the pueblo was entitled, is the center of the old presidio (sic) square, and the survey is to be made in all directions, i. e., north, south, east and west, so as to include, in all, the four square leagues -- making up for deficiencies in one direction (where these exist by reason of water being reached, etc.) by including the quantity thus deficient in another line or lines. By applying these ruled of measurement to the peninsula of of (sic) San Francisco, and taking the center of the old presidio square as the initial point of the survey, we find that the fundo legal of that pueblo is bounded upon three sides by water, and that the fourth line must be drawn for quantity east and west, straight across the peninsula, from the Ocean to the Bay."

From this description, it necessarily follows that the pueblo had at the date of the conquest -- July 1846 -- a perfect title to the four leagues of land described.

The Government could, of course, survey it, but the surveyor would have no discretion in the performance of his duty, he could only find where the boundaries have been, ever since the foundation of the pueblo.

But if any doubt exists as to the character of the pueblo title, as derived from the Mexican authorities, it is evident, that the Act of Congress, of March 3d, 1851, operated as a legislative grant to the pueblos of California, of all interest which the United States may have acquired, if any, by the conquest, which grant took effect by relation as of the 7th July, 1846. The Act of March 3d, 1851, was retroacting by its terms to 1846; and being the first solemn official Act by Congress on the subject of the lands of the Pueblos would, to our mind, effectually annul and destroy the unauthorized proclamation of Mr. Fillmore providing for a military reservation in the centre of the Pueblo lands. It must be constantly remembered that the act of Mr. Fillmore in making this large and useless reservation, was wholly without of law, and without the consent of Congress; and when the proceeding is now reviewed by the light of the many Judicial decisions upon the subject, it is remarkable that this immense rancho (used principally for herding cows) should have been so long permitted to exist within the limits of a thriving and prosperous city like San Francisco.

In the case of Welsh v. Sullivan, 8 Cal., on page 198, the Court say:





"It is urged that the fees of the ungranted lots within the City remained in the Mexican government, because the municipal and common lands were never actually assigned to the Pueblo by a survey or judicial possession made by competent officers. The practical force of this argument is not perceived. It is perhaps true that the Governors might grant within the Pueblo until the measurement was had; but under the Spanish and Mexican law, the right of the Pueblo to have the municipal and common lands assigned, was an acknowledged equity. The United States succeeded to the fee charged with this equity, and are bound to respect it by the treaty with Mexico.

"The Act of Congress of 1851, removes all difficulty about the boundary by acknowledging this right; and by releasing to the present City all lands vacant and ungranted on the 7th day of July, 1846, removed all difficulties on the subject. Under the decisions of the Supreme Court of the United States, this release was equivalent to a Legislative (sic) grant upon which ejectment can be maintained, as well as upon the patent which is only a ministerial act, while the other is the direct act of the sovereign through the Legislative department. See Grignor v. Astor, 2 Howard, 319, in which the Supreme Court of the United States held, that 'a title to land becomes a legal title when a claim is confirmed by Congress. Such confirmation is a higher evidence of title than a patent, because it is a direct grant of the fee which had been previously been in the United States.

And again, in Payne & Dewey v. Treadwell, 16 Cal. (ut supra) on p. 239, the Court, in passing upon the title to the land granted by an Alcalde of the Pueblo, say:

"There can be no question as to the fact that this property was within the limits of the old Pueblo as we have defined those limits to be."

. . . . .

"Our conclusion is, that upon two distinct and independent grounds, the validity of these Alcalde grants may be safely rested:

"1. Upon the title of the Pueblo and the presumed authority of the Alcaldes as the proper granting officers to grant lots within the Pueblo.

"2. Upon the Van Ness Ordinance and Act of the Legislature of 1858, which last, in effect, validates and affirms such grants, whether they were or not originally good, or whether the title of the City came by grant to the old Pueblo, or had its origin, by presumption or grant, in the Act of Congress of March 3d, 1851."

This decision was concurred in by Mr. Justice Field, who is now one of the Judges of the Supreme Court of the United States.

It will be seen by an examination of all the cases upon the subject, that the right of the Pueblo to all the lands within its limits is treated as a perfect title.

As early as the case of Cohais v. Raisin, 3 Cal., 443, the Supreme Court of California held, "before the military occupation of California by the army of the United States, San





"Francisco was a Mexican Pueblo or municipal corporation, and was  
"invested with title to the lands within her boundaries. . . . .  
"By the laws of Mexico, towns were invested with ownership of  
"lands." . . . The occupation and subsequent acquisition of Cali-  
"fornia by the United States, did not suspend or determine any  
"rights or interest of San Francisco in such lands."

"The Pueblo retained, during the war, all its rights  
"to municipal lands which had been conferred upon it previous  
"to the war. The right to alienate is incident to that of owner-  
"ship. The fact that this right was exercised by the municipality  
"from 1835 to 1850, without question or restriction, would prove  
"the usage and custom in the absence of law."

"The Pueblo had the same right to dispose of its  
"property during the war as a natural person."

All the decisions speak of the Pueblo title as being  
perfect under the Mexican law, and, if any doubt remained upon  
that point, it was settled by Section 14 of the Act of Congress,  
to ascertain and settle private land claims in California, which  
was, in effect, a Legislative grant, and is higher evidence of  
title than a patent.

Welsh v. Sullivan, 8 Cal., ut supra.

And here let us inquire the difference between a  
perfect and an imperfect grant.

This question was partially answered in the case of  
Carpentier v. Montgomery, 13 Wallace, 480, wherein the Court held  
that where a Spanish or Mexican grant of lands in California,  
does not identify the precise tract of land granted, the title  
is imperfect, and that such is the case where one side of the  
tract is undefined, or one of the exterior boundary lines cannot  
be located, in such case a survey is necessary to demonstrate  
the particular tract granted.

This decision follows in the path of prior adjudica-  
tions on the subject, and clearly indicates that the title is  
only imperfect when the exact tract of land granted cannot be  
identified from the public lands. Such is the case where the  
grant calls for a certain quantity -- say four leagues -- with-  
out exterior boundaries containing a larger quantity -- say ten  
leagues. In all such cases it is imperative that the four leagues  
should be officially selected and set apart from (within) the  
ten leagues, and a survey thereof made, so as to determine and  
define what is "private land," and what is "public lands," so to  
speak. And the converse of the proposition must be true, that  
all titles are perfect where the grant is in presenté, and the  
boundary lines perfect and complete; and when a title is perfect,  
of what benefit is confirmation?

In the case of Mintum v. Brower, 24 Cal., the pre-  
cise point was decided, and the Court held, that "Mexicans who,  
"previous to the acquisitions of California by the United States,  
"were established in and had acquired from the Governments of  
"either Spain or Mexico a perfect title to lands in California,  
"and who chose to remain in California, were, by the treaty of  
"Guadalupe Hidalgo, protected in the ownership and enjoyment of  
"the land the same as though no change of sovereignty had taken  
"place."





"Mexicans whose titles to lands, by grant from Mexico or Spain were perfect at the time of the acquisition of California by the United States were not compelled to submit them for confirmation to the Board of Commissioners appointed under the Act of Congress of March 3d, 1851, nor did they forfeit their lands to the Government by a failure to present their claims for confirmation."

"Holders of titles to lands which were perfect at the date of the treaty, could, if they so elected, submit them to be passed upon by the Commissioners, but they were not bound to do so."

But if the holder should elect to present his perfect title to the Board for confirmation, we submit, that neither the Board nor the Circuit Court could confirm it so as to take from him any part of his land.

And so, we submit, the Circuit Court, in confirming the title of the City of San Francisco to the pueblo lands, could not, in the same breath except therefrom (or confiscate, if you please) a large, or any, portion thereof for military, or any other uses.

If the Court had the power to except from confirmation one inch of those lands it could, with equal facility, have reserved therefrom for military or any purposes, the entire patrimony of the city. This could not and cannot be permitted.

But even if it be held that the city and its inhabitants derive all their rights under and by virtue of the decree in this case, we do not think the rights we contend for are in any manner limited or narrowed.

This decree is clear and definite as to the boundaries of the pueblo lands. It includes all the lands in the extreme upper portion of the peninsula, bounded on the north and east by the Bay of San Francisco and on the west by the Pacific Ocean, except such portion thereof as had been theretofore reserved or dedicated to public uses by the United States.

Of course Judge Field means to except only such portions as may have been lawfully reserved or dedicated; and the question is distinctly presented, whether the proceedings of President Fillmore, in undertaking to establish the so-called Presidio Reservation out of the pueblo lands of the city were legal or binding, or whether they were wholly without authority or jurisdiction, and consequently null and void.

We insist, that, in so far as this proclamation exceeds in quantity the lands actually occupied and used by the former Mexican Government as a barracks, it is wholly void.

It is proper to observe that there is an obvious difference between a pueblo and a Presidio; the former is a Municipal corporation, seized in fee of the lands within its boundaries, while a Presidio is simply a garrison of soldiers with jurisdictional boundaries for military purposes only, but wholly without claim of title to any lands whatever. If, then, the Presidio at San Francisco, on the 7th day of July, 1846, held no land, except, perhaps, the possession of the small parcel actually occupied and used by the garrison, the sequence is undisputable, that the large and valuable tract sought to be reserved by the President, on his own motion (for there was no Act





of Congress to sustain him) was the property of the City of San Francisco, and, therefore, beyond the control of either the President or of Congress. At the time of the President's first proclamation, November 6th, 1850, the State of California had been admitted into the Union as a Sovereign State, and San Francisco was an incorporated city under the laws thereof:

The laws of Mexico had given place to the common law, and the Municipal rights of the city, as successor of the former pueblo, had completely crystalized.

Among these guaranteed by the treaty and by the Constitution, is the right to acquire, possess and protect property, and, of which the city could not be divested or deprived without due process of law and full compensation therefor.

It may be that the President, in view of the chaotic condition of the land titles in California and the want of knowledge in respect thereto, believed he had the right to make this large reservation; but in the light, and upon the authority of numerous subsequent decisions of both the Federal and State Courts, it is clear that his "reservation proclamation", so called, as far as it affected San Francisco, was an arbitrary effort to take private property for public uses without compensation; and if this illegal act has ripened into anything like a lawful claim, it results in nothing more or less than confiscation. Because it is apparent that the Federal Government, after the admission of California as a sovereign State, in September, 1850, no longer retained any power or right of disposal over the pueblo lands; the right to control their disposition had lodged exclusively in the city, subject to the concurrence of the Legislature of the State. In the case of Hart vs. Burnett, 15 Cal. 530, this question was fully considered and passed upon by the Court after the most exhaustive research of able counsel, and the Court held that San Francisco was, at the date of the conquest and cession of California, and long prior to that time, a pueblo, entitled to and possessing all the rights which the law conferred upon such municipal corporations; that the said pueblo had a certain right or title to the lands within its general limits; that the municipal lands to which the City of San Francisco succeeded, were held in trust for the public uses of that city; and that this property and these trusts, were municipal in their nature, and were within the control and supervision of the State sovereignty, and that the Federal Government had no such control or supervision. See, also, on this point:

Townsend vs. Greely, ut supra.

United States vs. Pico, ut supra.

New Orleans vs. United States, 10 Peters, p. 736.

Here, then, we have the declaration of the highest Courts in the land, that the United States, after September, 1850, had no control over the lands in question, and yet the military authorities have taken by force, and have continued to hold by force, nearly 2000 acres, without authority of any kind.

The unauthorized act of Mr. Fillmore in his attempt to spoliage the city's property to the extent of millions of dollars, was not the act of the Government, and has never been binding on anybody.

The acts and laws of the Spanish and Mexican authorities, together with the treaty of Guadalupe Hidalgo, united with the 14th Section of the Act of Congress of March 3d, 1851, granting these lands to the Pueblo of San Francisco, as of July 7th, 1846, resulted in a perfect title, both at law and in equity,





to the Pueblo and the City of San Francisco, as against the United States and their authorities. A title which could not, and cannot, be destroyed by the proclamation of the President, whether made by authority of Congress or not.

In any event, the City of San Francisco was possessed of an equitable title which was fully covered by the treaty and law of nations, and she could not be plundered under the pretense that the former Presidio had any right to any portion of the Pueblo lands, except, perhaps, such portion as was actually covered by the ruins of the old Presidio buildings in July, 1846.

From the above we contend:

First.-- That no matter whether the city had a perfect title or took its title by virtue of the decree in this cause, and irrespective of the question as to the power of the President to make without congressional authority, military reservations, the city's rights were vested and could not be divested by the President or any act of Congress.

Second.-- That as the reservation claimed to be made by the President was void, and as no other reservation by the United States authorities has ever been attempted, the Presidio reservation, even under the decree of Judge Field, is limited to such reservation or claim as the Mexican Government had at the time of the cession.

This Presidio or Reservation was beyond all question limited to the ground actually occupied by the Old Fort or Barracks, which was less than twenty acres, there being no mention in any records of any other boundaries; no line drawn or segregation attempted or indeed claim made other than or beyond the ground covered by the Old Presidio Barracks until the unauthorized proclamation of President Fillmore, enlarging the Mexican Presidio Barracks of twenty acres to a so called military reservation of nearly two thousand acres.

-II-

We now proceed to discuss the question as to what rights the old Presidio possessed under the Spanish and Mexican laws, and, as ancillary thereto, the right of Mr. Fillmore or the United States, to reserve, or take, from the Pueblo of San Francisco any portion of the peninsula for public or military purposes, without compensation. It has already been said that the Presidios of California were military establishments for the protection of the earlier settlers of the country, the Government then being entirely ecclesiastical and military.

The Church settlements (called Missions) and the garrisons of soldiers (called Presidios) were generally located near each other, but the Presidios or military departments included within their military jurisdiction the civil and church settlements for the purpose of extending to them such military protection as they might need.

Escriche defines the word Presidio as follows: "The garrison of soldiers which is placed in the plazas, castles and fortresses for the protection of the same."

"The city or fortress which may be garrisoned by soldiers."

In volume 5 of Febrero-Novisimo, p. 708, the word





Presidio, is defined as follows: "The plaza or place designed for the punishment of delinquents. The punishment or penalty which is imposed on certain delinquents, of serving in some Presidio at the labor assigned to them."

"A prison in the large cities for the confinement of persons to be imprisoned for a short time (City Prison.)"

The word, or term, seems to express the same general idea in the Spanish as the words fortress, fort, garrison or prison do in the English language; and it does not appear that either the Presidios of Spain or Mexico had anything more than jurisdictional boundaries.

They neither owned nor claimed any interest in lands, but were one of the branches of the governments of Spain and Mexico, and, if occasion required, they doubtless occupied sufficient of the public lands for their convenient uses; yet it is hardly necessary to say that they had no power to trench upon private rights; nor could they exercise any right of occupation or control over the lands of the Pueblos.

It is of course difficult to prove a negative, and we shall rest our case on that point by asserting that no Spanish nor Mexican law can be found which shows, or tends to show, in the remotest degree, the least semblance of title to lands in the Presidios.

As appears from the Mexican archives, there were four Presidial establishments in upper California, to wit: at San Diego, Santa Barbara, Monterey, and San Francisco; that of San Francisco being designed for the protection of the neighboring Missions of Dolores and Santa Clara, the settlements that might be formed in the neighboring region, and new Missions that might be established.

Report R. C. Hopkins, p. 1, Dwinelle's Col. His.

The jurisdictional boundaries of the Presidio of San Francisco doubtless extended to those of the Presidio of Monterey; this is indicated by the fact that possession was given to the "Fundadores" (first settlers) of the Pueblo of San Jose, by Don Josef Moraga, commandante of the Presidio of San Francisco.

Esriche says (see "Presidio") that the demarcation of each Peninsula (Spanish) Presidio, are regulated in the following manner:

"That of the Presidio of Barcelona shall embrace all the Pueblos included in the provinces of Barcelona, Lerida, Gerona and Tarragona.

"That of the Presidio of Valencia shall embrace the provinces of Valencia, Castellon, Alcanté, Maricía, Albecete and Cuenca", and so on, giving all the Presidios in Spain, and showing conclusively that a Presidio was nothing more than a military department, including within its jurisdictional limits several, or any number of, Pueblos. So that the Presidios exercised such military or political power as were conferred on them by law within their general limits, while the Pueblos therein were seized in fee of four leagues of land each, for the benefit of the inhabitants thereof; and thus it was that the Presidio of





San Francisco formerly included within its military jurisdiction the Pueblo of San Jose; but it does not appear that the Presidio, for that or for any reason, ever claimed to own or control any portion of the lands of that Pueblo; on the contrary, it does appear that the City of San Jose had its title to the whole four square leagues owned by the former Pueblo of that name, finally confirmed by the United States authorities.

Vide Claim of Mayor and Common Council of San Jose for Pueblo lands, numbered 286 in Land Commission and 419 in District Court, confirmed by Commission 5th February, 1856, and in District Court, November 26th, 1859..

In the same manner the Pueblo lands of Monterey, Santa Barbara, and San Diego, were fully and finally confirmed to those towns, without reference to the fact that they were all formerly known as Presidios.

Vide claim of Santa Barbara for Pueblo lands No. 543, in Land Commission, 242 in District Court, confirmed by District Court, March 6th, 1861. Claim of Monterey for Pueblo lands No. 714, in Land Commission, confirmed January 2d, 1856, and appeal dismissed February 1st, 1858. Claim of San Diego for Pueblo lands, No. 589, in Land Commission, confirmed January 27th, 1856, and appeal dismissed June 8th, 1857.

It is clear that the Presidios, so called, were not considered in those instances, as having, or pretending to have, any right to the Pueblo lands; and yet, in the case of San Francisco, the President and the military authorities claim nearly two thousand acres of land, under the pretense that the old deserted Presidio, so called, had some prior right thereto.

The entire proceeding is utterly without precedent or law, and ought to be promptly annulled by the Department.

Having shown, as we think, that the Presidio never held, or claimed, any interest in the lands in question; and that the Pueblo title of the City of San Francisco was perfect, not only under the Mexican law, but also under the Act of Congress of March 3d, 1851, we shall now proceed to examine the question as to the power of the President to make reservations of public lands without express authority of Congress.

This brings us to an examination of the various Acts of Congress upon the subject of reservations throughout the United States.

### III.

#### THE PRESIDENT HAD NO AUTHORITY TO MAKE THE RESERVATION IN QUESTION

Section 3, Article IV., of the Constitution of the United States, provides as follows:

"The Congress shall have power to dispose of and make  
"all needful rules and regulations respecting the territory or  
"other property belonging to the United States, and nothing in  
"this Constitution shall be so construed as to prejudice any  
"claims of the United States, or of any particular State."

There is nothing in the Constitution giving the President, by implication or otherwise, any power over the disposition, or even regulation of the public property. He cannot





act without authority from Congress, and such authority would give him no power over the property of any person, corporation or State.

However, Congress has always legislated upon the subject of reserving the public lands for military uses, or other purposes, and the President has never, previous to making the reservation in question, presumed to act in such matters without authority from Congress.

As early as May, 1796, Congress passed an Act authorizing the President to make certain reservations therein specifically mentioned. Vide U. S. Statutes at Large, Vol. 1, p. 464, sec. 3.

Thereafter, various Acts of Congress were passed in which that officer was empowered to make specific reservations of the public domain.

Vide vol. 2 U. S. Statutes at Large, p. 479.  
" 3 " " " " " " " " " " " " pp. 347.

296,607.

Vol. 4, U. S. Statutes, pp. 75, 364.  
" 5 " " " " " " " " " " " " p. 116.

Brightley's U. S. Dig., pp. 494, 549, 550, 572, 499, 501, 570.

On the 14th of February, 1853, Congress passed an Act authorizing the President to make reservations for forts, arsenals, etc., in Oregon, but limited the quantity to six hundred and forty acres for forts, and to twenty acres for other purposes.

Vide Brightley's Digest, p. 573, sec. 627. About the last legislation on the subject of reservation, is an Act reserving the Salt Springs of Arkansas.

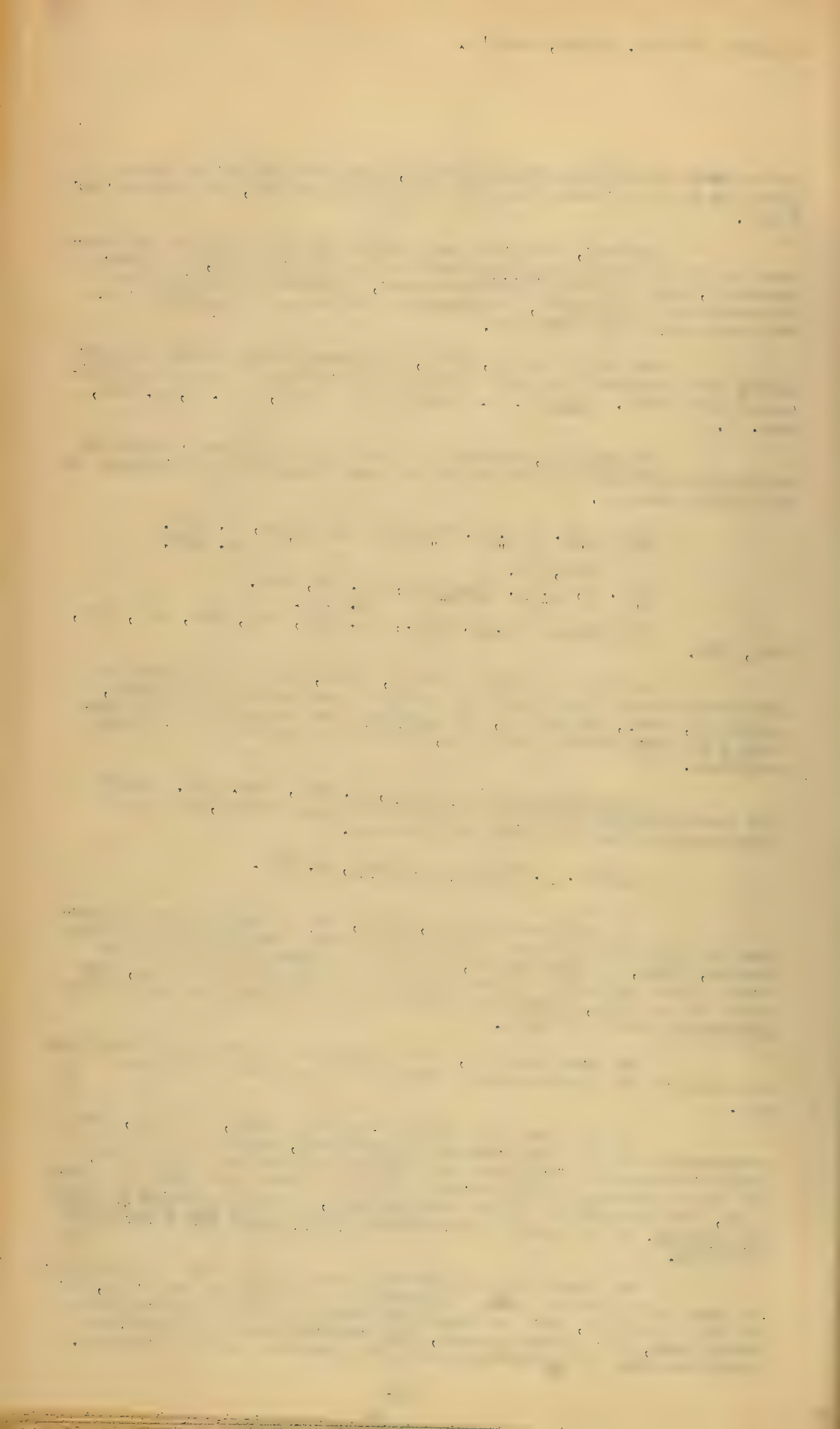
Vide U. S. Statutes 1876-7, p. 377.

On the 3rd of March, 1853, the President was authorized by Congress to make five indian (sic) reservations in California, Utah, or New Mexico, but he was specially prohibited from taking any lands inhabited by citizens of California, and there is nothing, giving by relation any validity to his proclamations of 1850 and 1851.

It thus appears, that Congress always legislated upon the subject of reservations before the President attempted to act.

It is true that the Pre-emption Laws, of 1841, and subsequent Acts of Congress on the subject, make reference to lands theretofore "reserved by Congress or by the President"; but this language is in harmony with previous laws upon the subject, because all of their reservations, was either made by the Act itself, or a clause was inserted authorizing the President so to do.

So that the pre-emption laws necessarily and logically make reference to lands theretofore reserved by Congress, or by the President; but we claim nevertheless that the President never made, nor could he make, any reservation of the public domain without previous authority of Congress in the premises.





The Constitutional clause above quoted prohibited him from so doing.

That the President had no authority to issue or give validity to the reservation proclamation, so called, of November 7th, 1850, has been fully exemplified by the Acts of the government itself with reference to Mare Island, Alcatraz Island, Yerba Buena Island, and the lands on the Suscol Rancho, opposite Mare Island.

These tracts were all reserved by the same proclamation with that of the Presidio, yet the United States never insisted upon any rights as against the private claimants thereto.

G. W. P. Bissell and Wm. H. Aspinwall presented for Mare Island their claim to the Land Commission for confirmation. These claimants alleged and proved an imperfect made in 1841, by Governor Alvarado to Victor Castro, from whom they purchased. The case is numbered 307 on the Docket of the Land Commission, and was confirmed by the Board on the 8th day of May, 1855, and also by the U. S. District Court, on the 7th of March, 1857.

Afterwards, the United States purchased the Island from Bissell and Aspinwall, and paid a large price therefor, viz: over seventy thousand dollars.

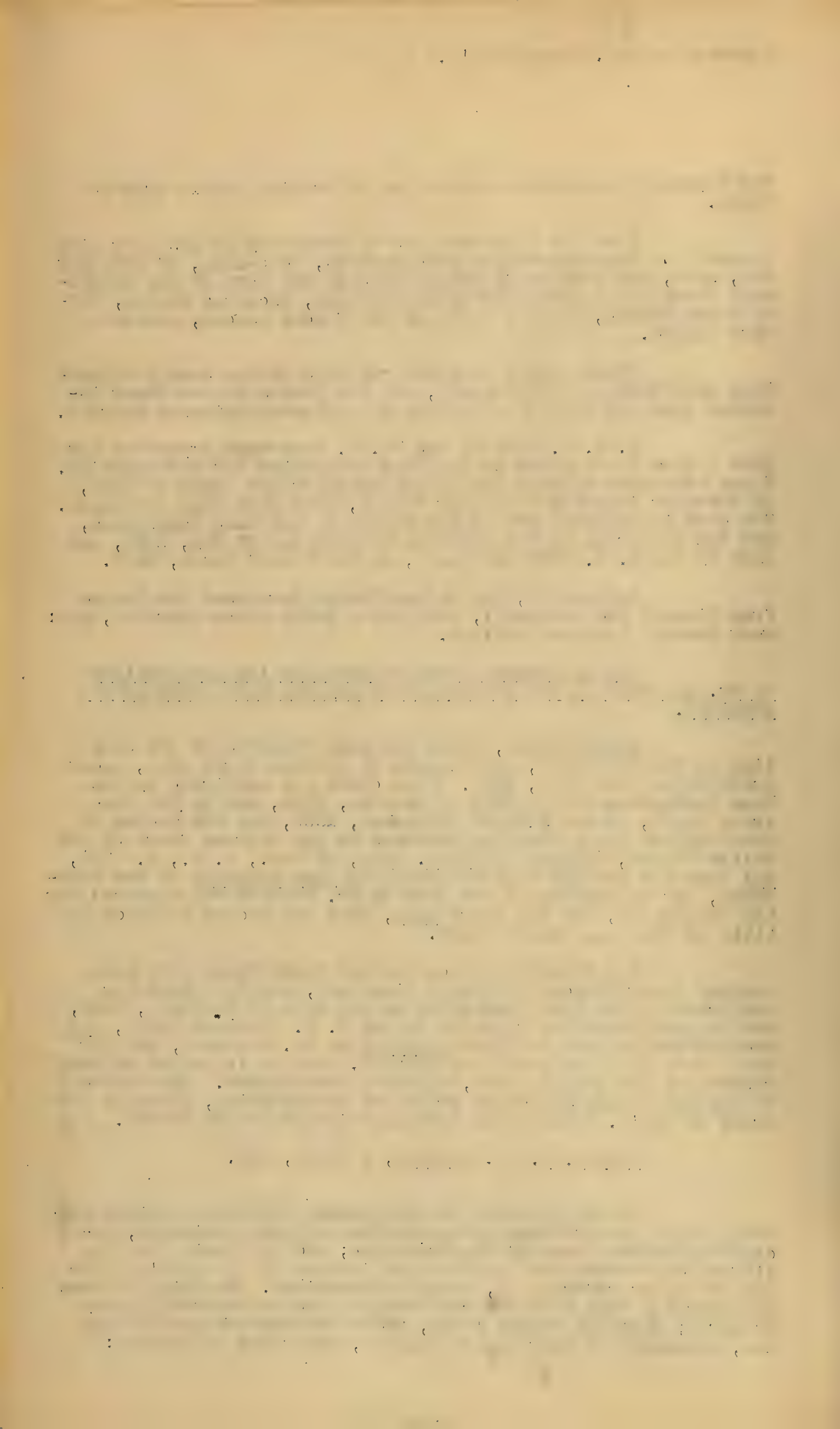
The government never relied upon the proclamation of Mr. Fillmore as the foundation of any right or title to the premises.

Angel Island, which was also reserved at the same time by the President, was claimed by Antonio Maria Osio, under grant dated June 11th, 1839. This claim was confirmed by the Land Commission on the 25th of October, 1854, and by the District Court, on the 10th of September, 1855, but the decree of confirmation was afterwards reversed by the Supreme Court of the United States, (United States v. Osio, 23 How., U. S., p. 273), not upon the grounds that the land had been reserved by the President, for no such point was made by Mr. Stanton who appeared for the Government; but the Court held, that the record evidence of title in Osio was insufficient.

The Islands of Alcatraz and Yerba Buena were also claimed under Mexican grants by Limantour, and the claim was confirmed by the Land Commission on the 12th of February, 1856, but it was afterwards rejected by the U. S. District Court, not because the Islands had been reserved by Mr. Fillmore, but for the reason that the grant was invalid. And so in regard to the reserve on the Suscol grant, opposite Mare Island. The United States never made any claim under the proclamation, although the grant to Gen'l. Vallejo was finally rejected by the Courts.

Vide U. S. vs. Vallejo, 1 Black, 541.

So we find that the Government has never claimed anything under the proclamation as against private claimants, except the Pueblo lands of San Francisco; and we submit that the difference between the legality and justice of the city's title and the other referred to, is not perceptible. We think we have demonstrated that this Mexican Presidio had no interest in any property; that the Pueblo lands, under the Spanish and Mexican law, consisted of four square leagues, described as follows:





Commencing at the centre of the old Presidio Plaza, and running to the four winds to water, and on a line of latitude extending from the Bay to the Ocean, so as to include, and which always did include, (ever since the origin of the Pueblo), four square leagues; that for this reason the city's land segregated itself from the public domain, and was not affected by the change of sovereignty from Mexico to the United States; that upon the admission of California into the Union as a State, in September, 1850, she succeeded to the sovereignty over all Municipal property within her boundaries, and that neither the President nor the United States thereafter, to-wit: After September, 1850, held or retained any power whatever over the Municipal lands in question.

This right was vested exclusively in the State, and under the provisions of Article IV., Sec. 3, of the Constitution above quoted, Congress itself could take no action in reference to the Municipal lands, which would "prejudice any claim of the State"; yet, it is contended that the President, by usurping the powers conferred by the Constitution upon Congress, could take the heart and centre of the city's lands to the extent of nearly two thousand acres, including the old Presidio square -- the initial point -- where the description thereof necessarily commenced.

Vide The Ordinanzas de Tierras y Aguas.  
Payne & Dewey vs. Treadwell, 16 Cal., 220.

It is evident that the United States never made such a claim as against the city, or against any other private claimant of lands under Mexican title; thus, even if Congress had attempted to legislate away the rights of the city, it is apparent that its action ought not to be supported for a moment. No Act of Congress could effect a change of proprietorship in or to the property of the former inhabitants of the country. This must be so, not only from an absence of power on the part of Congress to effect such a result, but the truth is, Congress has never attempted to pass any such law. A treaty of cession is a deed or grant of one sovereign to another, and transfers nothing in which he had no right of property, and only such rights pass as he owned and could convey to the grantee. By the treaty of Guadalupe Hidalgo, the United States acquired no lands in California to which any person, or corporation, had lawfully obtained a right or title; and Congress cannot constitutionally, by a mere enactment, deprive a citizen of his lawful estate; and if it should attempt it, the Courts would not sustain such a spoliation Act.

Vide U. S. vs. Perchman, 7 Peters, 87.

If Congress could not commit this Act of vandalism, how can it be sustained when done by the President, who acted without a semblance of power? The President, perhaps, believed he was reserving lands that were formerly owned by the old deserted Presidio of San Francisco; but, be that as it may, it was the veriest shadow of authority seeking the remains of a lifeless myth.

It is apparent that Congress was the only authorized agent, or arm of the Government capable of dealing with these lands, if the Government could touch them at all; and we clearly show that the first action ever taken by Congress in reference to them, was the passage of the Act of March 3d, 1851, by the 14th Section of which San Francisco as a pueblo was declared to be the owners thereof under grant, as of the 7th of July, 1846.





So, on one side we have Congress with sole and perfect authority, declaring, the city to be owner of the whole of this property, and on the other, we have the President, and the military authorities, asserting, without power, to the contrary. Will the Department attempt to affirm the void acts of the President, or will it follow the constitutional Acts of Congress legally passed?

IV.

THE RESERVATION MADE BY THE PRESIDENT IS

VOID FOR UNCERTAINTY IN DESCRIPTION.

The first proclamation describes the Presidio reservation as follows:

"From a point eight hundred yards south of Point San Jose to the southern boundary of the Presidio, along the southern boundary of its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos."

It appears at a glance, that this description fails to give either an eastern or northern boundary, and, in effect, is no description at all.

Afterwards, on the 31st of December, 1851, this description was changed so as to read as follows:

"The Presidio Tract and Fort Point, embracing all the land north of a line running in a westerly direction from the southeastern corner of the Presidio tract, to the southern extremity of a pond lying between Fort Point and Point Lobos, and passing through the middle of said pond and its outlet to the channel of entrance from the Ocean."

Vide Dwinelle's Col. Hist. (addenda) p. 221.

It will be seen that both of these descriptions call for the southern boundary of the Presidio, which would carry that line to a point somewhere south of the Pueblo of San Jose - a distance of sixty or seventy miles southerly from San Francisco -- for the southern boundary of the old Presidio undoubtedly extended to some point south of San Jose, and until it intersected the northern boundary of the old Presidio of Monterey.

But, of course, we do not think the President intended to give the reservation any such preposterous boundary, and we must, therefore, ascertain, if possible, what exterior lines were intended.

In the first description, the southern line was surely and clearly described as being the southern boundary of the Presidio, which would necessarily be a latitudinal line somewhere between San Jose and Monterey; but the second description of the southern boundary calls for the south-eastern corner of the "Presidio tract", thence "to the southern extremity of a pond" (supposed to be Mountain Lake) "passing through the middle of said pond."

Now, we insist that there never was any subdivision known as the "Presidio tract", except the tract laid out by Mr.





Fillmore, in November, 1850; nor did the Presidio claim or possess any of the Pueblo lands, except such portion as was covered by the old buildings, formerly used by the officers and soldiers; and when the President used the expression "south-eastern corner of the Presidio tract", he necessarily intended the south-eastern corner of the Presidio buildings. There was no other tract or parcel of land to which he could refer in that connection.

A survey made, according to that description, would still leave the Government in possession of more than a thousand acres of the pueblo lands for its own uses -- a tract large enough, in any view, to take from the inhabitants without right or compensation.

That the survey should be made by commencing at the south-eastern corner of the Presidio buildings, is also apparent from the fact, that a line projected southerly from that corner to the "southern extremity" of the pond, would pass through the middle thereof, and, thereby substantially conform to the description called for in the last proclamation of the President.

We have already said that, in our opinion, this survey should be set aside and another one ordered to be so made, as to only include in the so called Government reservation, such lands as the old Presidio possessed under the former Mexican Government. We have endeavored to show that any survey executed according to the claim of the military department, will be an act of gross injustice to the inhabitants of San Francisco and one which the general Government cannot afford to legalize and perpetuate.

It results, then, from this portion of our argument, that the Presidio reservation, under either of the proclamations of Mr. Fillmore, is too uncertain in its southern boundary to be located at all, unless the south-eastern corner of the Presidio buildings are taken as the point of commencement, and running thence, southerly, to the southern extremity of the pond in such manner as to pass through the centre thereof. There can be no other reasonable conclusion, if we follow the last description made by the President, in December, 1851; and if we take the first boundaries established by him, in November, 1850, and go to the southern boundary of the Presidio of San Francisco, we necessarily reach a point somewhere south of the pueblo of San Jose.

As we have seen, it is clear the President did not mean to take in all the lands to the distance of sixty or seventy miles south of San Francisco, and, therefore, we take it that all parties must agree upon the south-eastern corner of the Presidio buildings as constituting the starting point in the southern boundary of the reservation; it is either that, or nothing, because there never was any other piece of land in the pueblo of San Francisco corresponding to the term "Presidio tract". But the description is deficient, under any circumstances, for the want of an eastern boundary. The proclamation says the line runs westerly from the south-eastern corner of the Presidio tract to the southern extremity of the pond, and thence to the ocean.

There are no other lines given, and the description is void, because it fails to include any specific piece of land.

The first part of the document is a letter from the Secretary of the State to the President, dated January 1, 1892. It contains a report on the state of the Union and the progress of the government during the year.

The second part of the document is a report on the state of the Union, dated January 1, 1892. It contains a detailed account of the various departments of the government and the progress of their work.

The third part of the document is a report on the state of the Union, dated January 1, 1892. It contains a detailed account of the various departments of the government and the progress of their work.

The fourth part of the document is a report on the state of the Union, dated January 1, 1892. It contains a detailed account of the various departments of the government and the progress of their work.

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The sixth part of the document is a report on the state of the Union, dated January 1, 1892. It contains a detailed account of the various departments of the government and the progress of their work.

The seventh part of the document is a report on the state of the Union, dated January 1, 1892. It contains a detailed account of the various departments of the government and the progress of their work.



V.

We now come to the 27th of February, 1866, when Mr. Stratton, as Deputy U. S. Surveyor for California went into the field to make the survey of the Presidio reservation.

His report to L. Upson, Esq., then U. S. Surveyor General for the State of California, is on file in this case, from which it appears that he did not follow the boundary lines as fixed by the President in December, 1851; but, on the contrary, fixed an arbitrary line of his own on the south and east.

The latter part of his report says:

"And on the 26th, having established the position of the corner monuments of the southern boundary of the Presidio reservation, I, in person, notified Major Allen, commanding the post, who expressed the same gratification that Major Bowman did, viz: "that the lines of the reserves would at last be officially surveyed and settled."

The correct line of the reservation, as I had established it, was then pointed out to me, after which I proceeded with my surveying duties. (The italics are ours, and are intended to give emphasis to the statement, that he, himself, established the south-eastern corner instead of Mr. Fillmore.)

Mr. Stratton gave no reason for establishing the corner where he did, nor is any excuse offered for running the southern boundary around the southern side of the pond, when the President's description declared that this line passed through the centre of the pond.

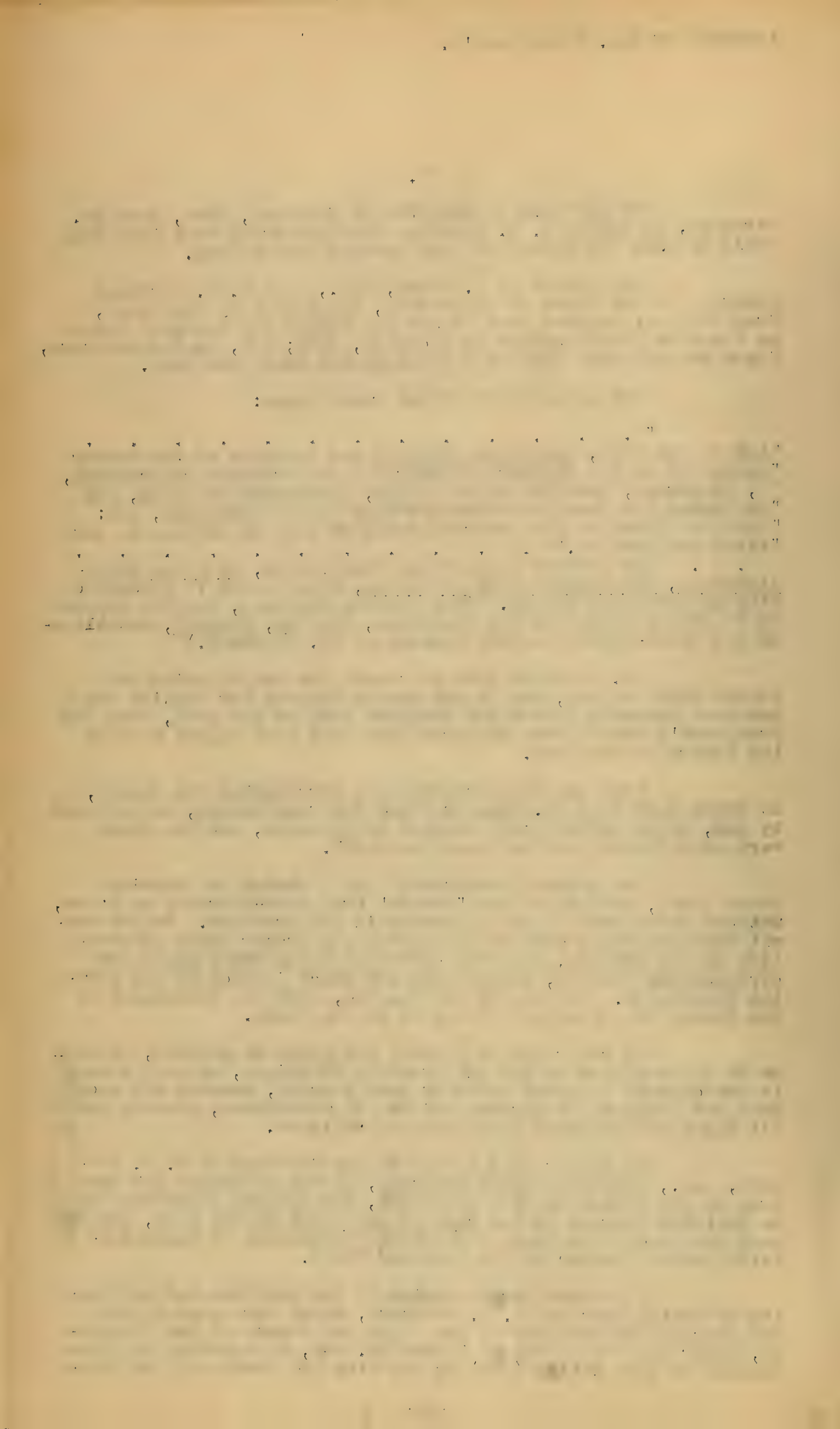
From all the circumstances surrounding the survey, it would seem that Mr. Stratton found the reservation, as surveyed by him, pretty effectually bounded by bayonets, and the lines were established in accordance therewith.

The military department has insisted on claiming these lands, because it had "orders" from head-quarters so to do, without reference to law or justice in the premises. But we submit that the whole case is now before the proper legal authorities of the country, who will carefully weigh every point and circumstance therein, and do even and exact justice to all parties interested. We take it for granted, that the Government of the United States cannot afford to do otherwise.

In referring to surveys and lines of surveys, as well as to the position of the old Presidio buildings, we have deemed it unnecessary to annex plats or maps thereof, because all such data and evidence is already before the department, showing fully all lines and proposed lines herein mentioned.

We appear in the case by the Courtesy of W. C. Burnett, Esq., City and County Attorney, as the attorneys for several of the claimants of these lands, who believe themselves to be entitled thereto as the cestuis que trust of the city, and who have expended large sums of money in the payment of taxes lawfully levied thereon by the City and State.

We append hereto copies of the petition and affidavits of Daniel Ryan and C. E. Woodbury, which were used before the Board of Supervisors of the City and County of San Francisco, under the provisions of "Order No. 748, to expedite the settlement of land titles (sic) in the City and County of San Fran-





cisco." These copies are marked "Exhibit A", and fully explain the equities of our claim.

In conclusion,

We submit the following propositions:

First -- That the City of San Francisco was, on the 7th of July, 1846, a Pueblo seized in fee of all the lands now held by the military authorities under the name of the Presidio reservation, except, perhaps that portion thereof which was actually occupied by the buildings of the Mexican Presidio or barracks.

Second -- That the 14th Section of the Act of Congress of March 3d, 1851, was an acknowledgment and grant of such title in and to the city, and substantially nullified all the acts of the President and military in reference thereto.

Third -- That the proceedings of the President and the military authorities, in reference to said lands, were coram non judice, and void ab initio.

Fourth -- That the reservation of the pretended "Presidio tract" is void for uncertainty in description.

Fifth -- That there never was any title or pretense of title to these premises in the Presidio under the Spanish or Mexican law.

Sixth -- If any validity can be attached to the reservation as made by Mr. Fillmore, the south-eastern line should commence at the south-eastern corner of the old Presidio buildings, as possessed and used by the Mexican Government.

Seventh - That the exception made in the confirmation by Judge Fields (sic) in favor of the United States, does not include nor apply to reservations made by the President without authority, nor to reservations which are void for uncertainty in description, i.e., description which does not enable the surveyor to trace the boundary lines without the necessity, on his part, of establishing the corners, or producing the boundaries himself, or as dictated or claimed by the officers of the U. S. Army.

We respectfully claim that under the above conclusions the survey in question should be set aside, and a new one ordered, which may give to San Francisco, and its inhabitants, their rights in the premises. A government of law, formed by law, and administered according to law, ought not to permit the continuance of this crime against private rights.

Respectfully submitted,

C. R. Greathouse,  
Eng. B. Drake,

Attorneys for claimants under the City and County of  
San Francisco.





EXHIBIT A.

Petition to the Board of Supervisors of the City and County of San Francisco:

The petition of Daniel Ryan and others, residents of the City and County of San Francisco, respectfully shows:

That your petitioners, by themselves and their tenants, and those under whom they claim or derive possession, have been from and including the 8th day of March, A. D. 1866, and still are, in the possession of the following described lands, situate, lying and being in the City and County of San Francisco, to wit: That tract of land bounded by a line beginning in the line between Township one (1) and two (2), south range six (6) west of the Mount Diablo meridian, ten chains west from the line between ranges five (5) and six (6), and running thence east along said section line forty (40) chains; thence south thirty-six chains; thence due west forty chains to a point thirty-six (36) chains due south from the starting point; and thence north to the point of beginning, being part of the northeast quarter of Section one (1), Township Two (2), south range six (6) west, and part of the northwest quarter of Section six (6), Township two (2), south range five (5) west of Mount Diablo meridian, and containing one hundred and thirty-five (135) acres, more or less.

That said land is embraced in the lands described in the decree of Justice Field of the U. S. Circuit Court, confirming the claim of the City and County of San Francisco, entered November 2d, 1864, in the Circuit Court of the United States, for the Northern District of the State of California, and has not been sold, leased, dedicated, reserved or conveyed by authority of the said City and County of San Francisco, or the United States, or to any one for any one for any purpose.

And your petitioners hereby ask that a grant of said lands be made to them under the provisions of an Ordinance of the Board of Supervisors of said City and County, entitled "Order No. 748" -- To expedite the settlement of Land Titles in the City and County of San Francisco.

Dated at the City and County of San Francisco, June 29th, A. D. 1867.

Daniel Ryan.

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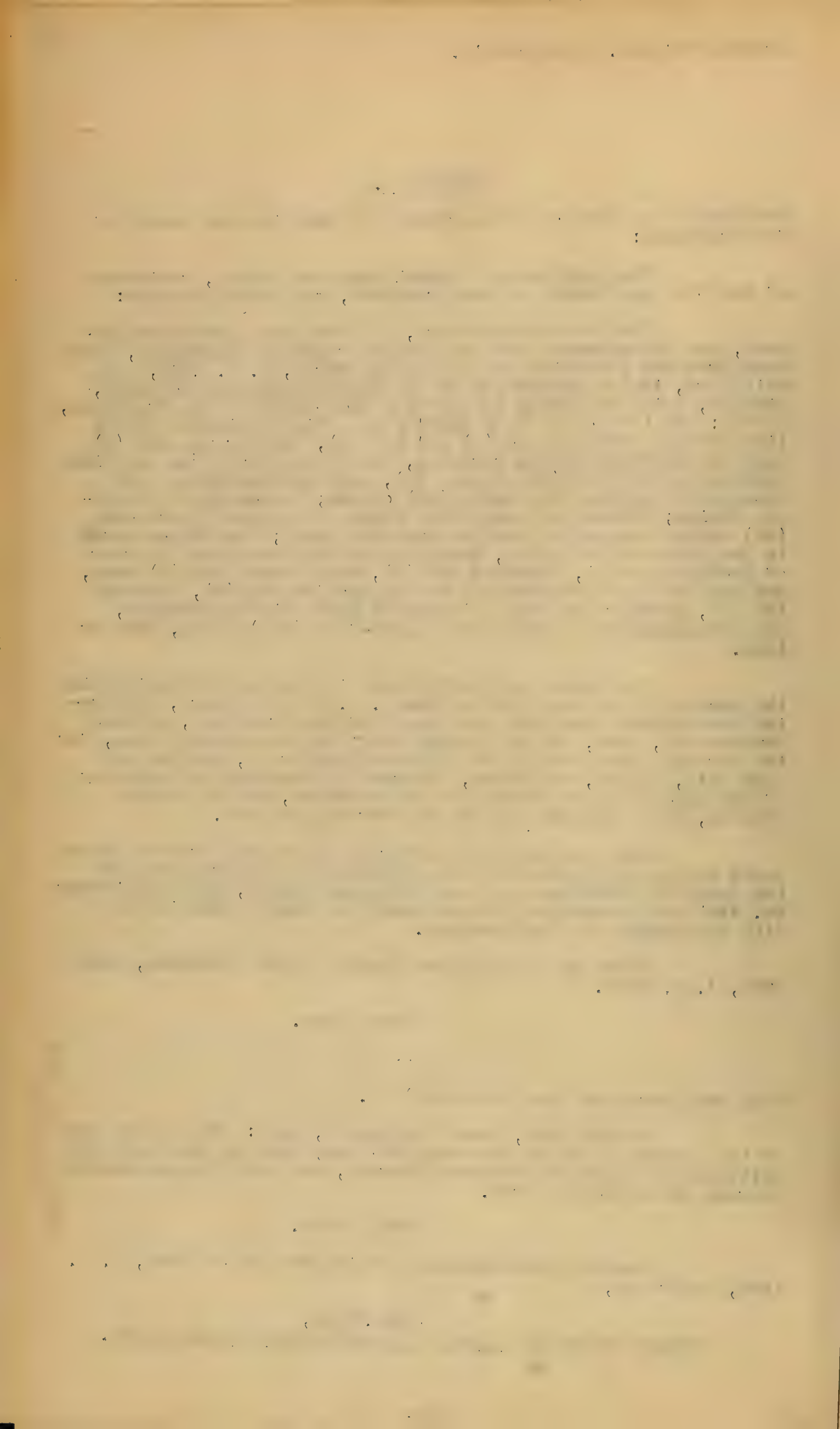
City and County of San Francisco ) SS.

Daniel Ryan, being duly sworn, says: That he is one of the persons named in the said petition; that he has read said petition and knows the contents thereof, and that the statements therein contained are true.

Daniel Ryan.

Sworn to and subscribed this 29th day of June, A. D. 1867, before me,

John White,  
Notary Public and Clerk of Committee on Outside Lands.





City and County of San Francisco ) SS.

Daniel Ryan, being duly sworn, says: That all taxes which have been assessed on the land described in the within petition during the five fiscal years preceding the year beginning the first of July, 1866, have been paid, and that application has been made to have said claim delineated on the map of Outside Lands.

Daniel Ryan.

Sworn to and subscribed before me, this 29th day of June, A. D. 1867.

John White,  
Notary Public and Clerk of Committee on Outside Lands.  
~~IN COMMITTEE OF THE BOARD OF SUPERVISORS ON OUTSIDE LANDS.~~  
In the Matter of the Petition )  
of Daniel Ryan, et al. ) No. 521.

Daniel Ryan, being duly sworn, deposes and says: I am one of the petitioners herein; I entered into possession of the premises described in the petition in 1853; I built a house and dug a well on the premises, and made some other improvements; I lived in that house during the whole time I remained there, to wit: from 1853 to 1864.

In 1864, I sold a part of the premises to Mr. C. E. Woodbury, and put him in possession of the whole, and I left immediately and went to Ireland. There was no fence around the tract, but the boundaries were marked out by posts set at the angles by the surveyor at the time he surveyed the tract in 1853; before I entered the posts were marked by letters. I entered into possession under a pre-emption claim, and my notice of pre-emption referred to the stakes by the letters upon them.

The boundaries, however, marked by these stakes included some land on the east which was claimed by Obed Chart, and which is not included in this petition.

Daniel Ryan.

Calvin E. Woodbury, being duly sworn, deposes and says: I have known the premises ever since 1857.

I have heard the testimony of Daniel Ryan, the preceding witness, and so far as it relates to what took place, after 1857, I know it to be true in every particular.

In 1864, I purchased an interest in the premises described in the petition from said Daniel Ryan, and took possession of the whole from him, and immediately leased it to the tenants of myself and Nugent and Judah, who had possession of the tract adjoining this on the west, and ever since that time the whole tract has been in possession of the tenants of the adjoining tract on the west, who have had leases from myself and Ryan.

The possession of Ryan and myself, and our co-tenants, has been continuous, exclusive and undisputed, from 1864, to the present time, except, as I shall state. The tract described in the petition has never been fully or entirely enclosed. It has





been enclosed in a common enclosure with the tracts adjoining on the east and west, ever since about the year 1861, except on the northerly side. The military authorities, having possession of the Government Reserve, have not acknowledged my possession to the extent claimed in my petition; and have refused to permit me to fence it on that line, but they have permitted our cattle to run across the line upon the Government Reserve, and have never disturbed or disputed our possession, except so far as to refuse to permit us to build a fence upon our line.

All taxes which have been assessed upon this land during the five fiscal years preceeding the year beginning July 1st, 1866, and since amounting to \$1,313.18 have been paid by me. My deed from Ryan describes the premises by metes and bounds substantially, as they are described in the petition.

Calvin E. Woodbury.

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State of California, )  
City and County of )SS.  
San Francisco. )

I, John White, a Notary Public, in and for the City and County of San Francisco, duly commissioned and sworn, and Clerk of Committee on Outside Lands, appointed under the provisions of Order No. 748, of the Board of Supervisors of the City and County of San Francisco, approved on the 22nd day of December, 1866, do hereby certify that the witnesses named in the foregoing depositions, were, by me, duly sworn to testify to the truth, the whole truth and nothing but the truth, that said depositions were reduced to writing, by me and carefully read to said witnesses, and being corrected by them, were subscribed by said witnesses, in my presence.

In testimony whereof I have hereunto set my hand and fixed my official seal this eleventh day of July, 1867.

John White,

Notary Public, and Clerk of Committee on Outside lands.

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I, John H. Russell, Clerk of the Board of Supervisors, City and County of San Francisco, hereby certify that the foregoing are true and correct copies of petition of Daniel Ryan, No. 521, for a portion of Outsine (sic) lands. Also copy of evidence of Daniel Ryan and Calvin E. Woodbury, together with certificate of John White, Clerk of Committee on Outside Lands, as the same appear on file in this Office.

In witness whereof, I hereunto place my hand (having no seal of office) this 7th day of January, A. D. 1870.

John H. Russell,  
Clerk

By Thos H. Reynolds,  
Deputy.

State of California, )  
City and County of San Francisco. )SS.

I, the undersigned, a Notary Public in and for the





City and County aforesaid, duly commissioned and sworn, do hereby certify that I have carefully compared the annexed copy of thd (sic) petition of Daniel Ryan, No. 521, with evidence, etc., taken for grant of portion of Outside Lands, with original of which it purports to be, and that it is a true and literal copy of such original petition and evidence for grant of Outside Lands.

Witness my hand and official seal, this 16th day of September, 1877.

(SEAL)

James D. Craig,

Notary Public.





MEMORIAL TO THE CONGRESS  
OF THE UNITED STATES.  
AGAINST THE CONFIRMATION BY CONGRESS OF THE STRATTON SURVEY  
OF THE PUEBLO OF SAN FRANCISCO.

(May 9, 1878.)

(San Francisco, no date.)

pp. 71.      8.10

MEMORIAL

In opposition to passage of Senate and House Bills confirming the Stratton Survey of the Pueblo of San Francisco.

-oOo-

To the Congress of the United States:

Your memorialists, who have been contesting before the Secretary of the Interior, on behalf of Lot Owners and Savings Banks, the approval of the Stratton Survey of the Pueblo of San Francisco, hereby protest against the passage by Congress of any bill confirming that survey. That this survey is wrong and vicious in whole and in all its parts; that it was made in certain special interests and without any reference to the decree; and that a final confirmation of it will result in unsettling titles to millions of property which have always held to be good, there can be no question. That Congress will consent to invade the jurisdiction of the Interior Department for the purpose of working this wrong we are loth to believe.

Independently of these considerations, we respectfully submit that Congress has no constitutional power to pass such a bill. It cannot make a decree, nor can it modify one so as to affect vested rights. The survey must conform to the decree, and it does not lie with Congress to say it does so conform, when the fact is patent that it does not so conform. Furthermore, any person excluded by the survey, could collaterally attack such a statute, and in his own protection show the falsity of it. The confirmatory Act, could, therefore, accomplish nothing. The persons specially interested in the confirmation of the survey must know this well enough, but they seem to hope by appealing to Congress, to delay adverse action by the Interior Department, and thus worry and harass their apponents into submission.

The following communication, published in the San Francisco Bulletin, of date January 24, 1880, and signed by attorneys of the leading Savings Banks of the city, shows in brief the interests affected by the survey, as well as the erroneous-ness of it:





Editor Bulletin: As the Pueblo survey has again entered the field of newspaper controversy, and as there seems to be great misapprehension as to the effect of a rejection of the survey made by Stratton, it is perhaps an opportune moment to state some facts of which the public and the Board of Supervisors seem to be ignorant.

The most valuable interest affected by the survey consists of two large gores of land (involving over one hundred hundred-vara lots) situated south of Market street, between Third and Ninth streets, all of which was surveyed out of the Pueblo by Stratton without the least color of right or law, and every inch of which will be left without any recognized title in the occupants, if the Secretary of the Interior should affirm Commissioner Williamson's decision. All of these lots, so surveyed out, are held under town sales made by this city. The market price of the lots was paid by the various purchasers into the City Treasury, and the Alcalde duly made and delivered his deeds for the purpose of conveying title to the lots so sold. These titles have stood incontestable, and were until Commissioner Williamson's decision, held to be perfect. Should the Stratton survey be rejected, the cloud which now rests upon these titles will be removed, and matters will be as they were before.

In addition to the above-mentioned gores, there is a large quantity of land lying along and contiguous to Mission Creek, all of which rightfully belongs to the City and her beneficiaries, and the whole of which is left out of the Pueblo limits by the Stratton survey.

As the City stands as to all of these lands in the position of a trustee, she is bound to protect those holding under her, and should she not do so, the grave question will arise as to whether or not she cannot be held pecuniarily liable to all those who shall suffer, if by any affirmative action on her part she prevents an adjudication of the question on its merits.

That Mr. Stratton acted without color of right or law in surveying these lots out of the Pueblo, is manifest from the fact, that all of them are above the line of ordinary high tide, and for that reason have always been considered to be within the Pueblo limits. The surveyor was bound by the decree to establish the eastern boundary of the Pueblo along the line of ordinary high tide -- a line perfectly well known, for it had been established by the officers of the coast survey, and by the City Surveyor under the First Water Lot Bill of 1851. This has been the line recognized since the early days; titles deraigned under the city have always been passed down to it by every conveyancer and lawyer; and the false line of Stratton has never been recognized for a moment. No one familiar with land titles here, and whose opinion has any value, can be found bold enough to say, that Stratton's eastern line has ever been recognized or acted upon as the true line. On the contrary, the so-called Red Line Map, of record in the office of the City and County Surveyor, and which shows, by the red line marked on it by direction of the statute, the line of ordinary high tide, has become and is a great land-mark of property, well known and recognized as such by every conveyancer, lawyer and real estate dealer in the city. That line was never attempted to be disturbed at any time since the year 1851 until Mr. Stratton, in 1868, set it aside, and the decree as well which he was bound to obey.

But even after the survey was made, no one paid any attention to it except those who were interested in having a new





deal in titles; for all well-informed persons scouted the idea of such a preposterous survey meeting with approval, and the city herself protested against it, and acted in accordance with that protest until within quite a recent period. And, likewise, United States Surveyor General Day sent it to Washington, stamped with the seal of his condemnation. Nor has the survey ever been approved by any one authorized to approve it, until the decision last year of Commissioner Williamson, the appeal from which is now pending.

How titles can be settled by throwing down all the old landmarks, we are at a loss to see. One would suppose that the best way to protect titles would be by preserving well established boundaries. But we are told that the Tide Land Commissioners have made deeds which, in case the survey is rejected, will be imperilled. This may be true; but as those deeds were made without warrant of law; as they conveyed pueblo lands to which the State had no title, and as those who procured such deeds procured them at grossly inadequate prices, and took with them full notice of the rights of those holding under the city, the equities attaching to such deeds are of inappreciable consequence.

The eastern boundary of the Pueblo is the all-important one, for here lie the great interests -- the valuable improvements. All other interests affected by the survey sink into utter insignificance as compared with this; and yet we find our city fathers not only consenting to, but eagerly participating in, the destruction of this interest, and even a portion of the newspaper press clapping its hands in approval. In other words, we find the trustee, whose legal and moral duty it is to protect his beneficiary, turning upon him and despoiling him.

It is idle, perhaps, to discuss this matter in the newspapers, as the controversy will soon be determined by the proper tribunal.

But as, at the present time, there seems to be so much misapprehension in regard to the survey, we thought it well to present a few facts for the purpose of correcting this misapprehension. If the Stratton Survey should be rejected titles will be as they always have been, and no one will be hurt except those who ought to be hurt, viz: the gamblers in titles.

Edward R. Taylor.  
Jarboe & Harrison  
Henry C. Campbell  
George & Loughborough  
E. B. & J. W. Mastick  
Tobin & Tobin"

In order, however, that Congress may have a full understanding of the matter, we have appended to this memorial the brief filed with the Secretary of the Interior, in opposition to the survey, and beg that the same may be carefully considered.

The recital in the bills that the Stratton Survey was "approved by Lauren Upson, United States Surveyor-General for California", is wholly incorrect, and besides carries a wrong inference. Gen. Upson simply approved the plat of the survey, certifying simply that the survey had been correctly platted; while his successor, Gen. Day, who heard the testimony on

The first part of the history of the United States is the period from the discovery of the continent by Christopher Columbus in 1492 to the establishment of the first permanent settlements in 1607. This period is characterized by the exploration of the continent by Spanish, French, and English explorers, and the establishment of the first permanent settlements by the English in 1607.

The second part of the history of the United States is the period from 1607 to 1776. This period is characterized by the growth of the colonies, the struggle for independence from Britain, and the establishment of the United States as a new nation in 1776.

The third part of the history of the United States is the period from 1776 to 1865. This period is characterized by the American Revolution, the War of 1812, the expansion of the United States, and the Civil War, which ended in 1865.

The fourth part of the history of the United States is the period from 1865 to 1945. This period is characterized by the Reconstruction era, the Gilded Age, the Progressive Era, and the Great Depression, which ended in 1945.

The fifth part of the history of the United States is the period from 1945 to the present. This period is characterized by the Cold War, the Vietnam War, and the current era of globalization and technological advancement.

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the survey, decided that it was erroneous, and so reported in a written opinion to the Interior Department. This testimony and opinion are of record in the office of the Secretary of the Interior. So that, instead of the survey having been approved by the United States Surveyor-General for this state, it was condemned by him.

We respectfully and earnestly submit that there is no ground for the interference of Congress, more especially as the whole matter is now pending before the Secretary of the Interior and awaiting his action.

Respectfully submitted,

Edward R. Taylor  
Jarboe & Harrison,  
of Counsel for Lot Owners and for the  
German Savings Bank,  
Hibernia Savings Bank,  
San Francisco Savings Bank Union (sic),  
Savings and Loan Society, and  
Humboldt Savings Bank.

BRIEF ON BEHALF OF LOT OWNERS IN SUPPORT OF APPEAL TAKEN FROM  
THE DECISION OF THE COMMISSIONER OF THE GENERAL LAND OFFICE,  
APPROVING THE STRATTON SURVEY.  
IN THE DEPARTMENT OF THE INTERIOR.

..... )  
In the Matter of the Survey of the )  
Pueblo Lands of San Francisco. )  
..... )

To Hon. Carl Schurz, Secretary of the Interior:

Inasmuch as an appeal was taken from the decision of Commissioner Williamson by Jno. W. Dwinelle, Esq., special counsel for the City and County of San Francisco, which appeal is still pending; and inasmuch as by the neglect of the City and County no points and authorities, as we are informed, have been filed in support of said appeal, your memorialists, who represent lot owners claiming title to lands in San Francisco deraigned through the Pueblo, and whose lands are excluded by the Stratton Survey, beg leave on their own behalf to submit the following considerations for the reversal of the decision of the Commissioner confirming said survey.

It would be difficult to conceive of a more erroneous survey, or one more indefensible, than the Stratton Survey of the Pueblo of San Francisco. It not only sets at defiance the decree of the United States Circuit Court which it was the Surveyor's duty to follow, but it overturns what all conveyancers had for many years acted upon as the eastern boundary line of the Pueblo. In fact, this line had been established by Mr. Eddy, the City Surveyor, in 1851, acting under the first water-lot bill, and a map, made by him in accordance with his survey and

The first part of the report deals with the general situation of the country and the progress of the work during the year.

The second part contains a detailed account of the work done in the various departments.

The third part gives a summary of the results of the work and a statement of the financial position.

The fourth part contains a list of the names of the persons who have been employed during the year.

The fifth part contains a list of the names of the persons who have been employed during the year.

The sixth part contains a list of the names of the persons who have been employed during the year.

.....

The seventh part contains a list of the names of the persons who have been employed during the year.

The eighth part contains a list of the names of the persons who have been employed during the year.

The ninth part contains a list of the names of the persons who have been employed during the year.

The tenth part contains a list of the names of the persons who have been employed during the year.

The eleventh part contains a list of the names of the persons who have been employed during the year.

The twelfth part contains a list of the names of the persons who have been employed during the year.



known as the Red Line Map from the fact of the boundary having been delineated by a red line, has been hanging in the County Surveyor's office ever since it was platted, and has been the guide of every lawyer and conveyancer in San Francisco. Under this guidance titles emanating from the Pueblo and from the City as its successor, have been passed down to this line, and no one ever dreamed that any other or different line could be or would be established or recognized. In fact, this is one reason why so much lethargy has been shown while the Stratton Survey has been sleeping all these years in the Commissioner's office. Another reason is, that the profession generally did not deem a patent at all necessary, as while the pueblo contest was still pending in the Federal Courts, Congress by two acts, one of July 1, 1864, and one of March 8, 1866, granted to the city in trust all the interest of the United States in the Pueblo lands.

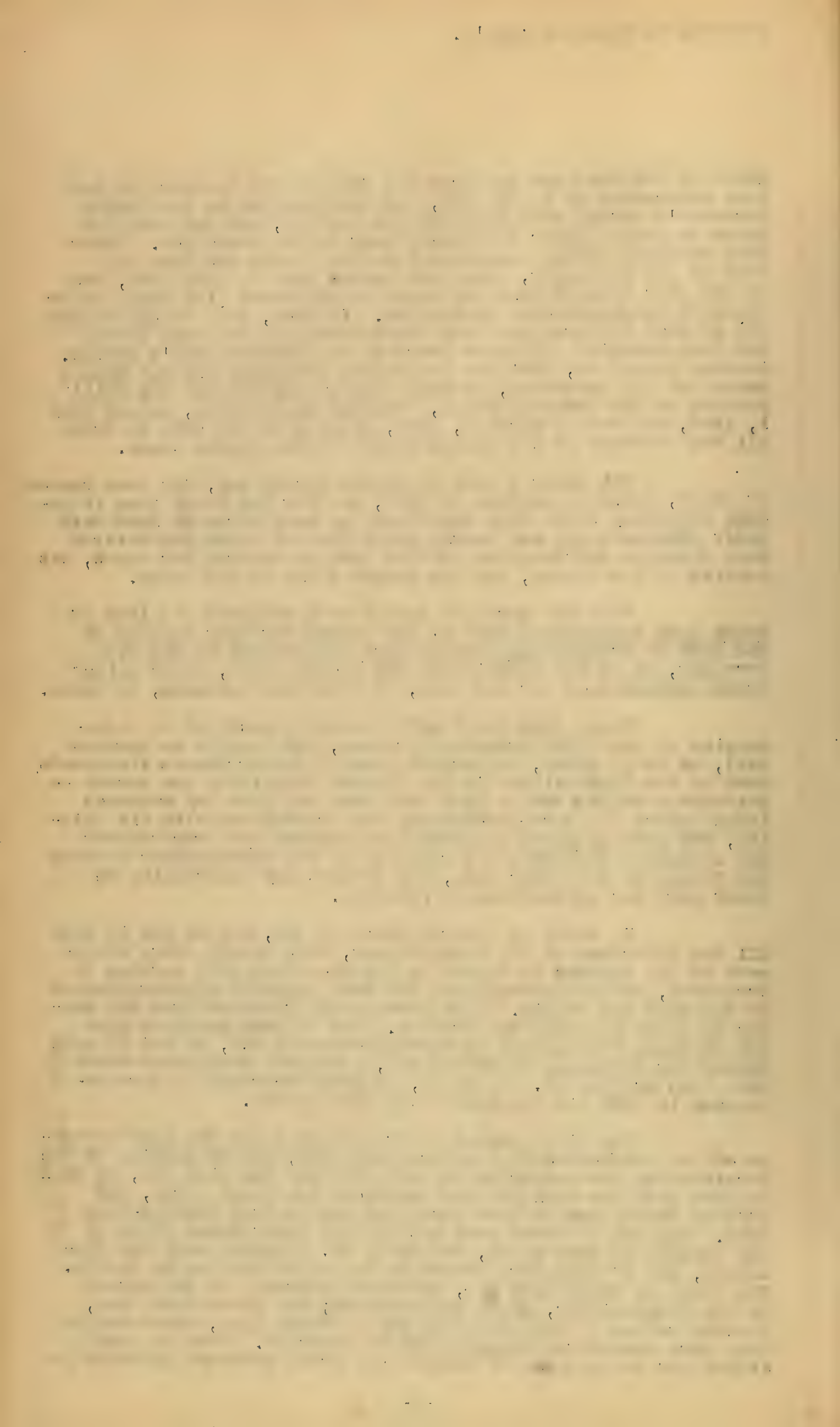
But after a long sleep the survey was, for some reason or other, suddenly awakened to life, and for the first time it became generally known that some forty or more acres of land held under Alcalde deeds and nearly every foot of which was covered with valuable improvements and had been so covered for years, was outside of the Pueblo, and the owners shorn of all title.

That the surveyor should have followed the line of swamp land segregation made by the County Surveyor instead of the line of ordinary high water mark established by the City Surveyor, as he was directed by the decree to do, shows either gross incompetency for his task, or utter recklessness, or worse.

While this brief will be mainly confined to a discussion of the fifth ground of protest, yet it will be perhaps well, as we go along, to correct some of the erroneous statements made by the Commissioner in his opinion sustaining the survey -- statements which seem to have been made not from any evidence taken before the Surveyor-General and transmitted with his opinion, but from ex parte statements of counsel and from records and documents sent on quite recently to the Commissioner without any notice to the other side, and without any opportunity on their part for explanation or rebuttal.

It would be entirely safe to say, and we say it with all due deference to the Commissioner, that nearly every statement in his opinion in regard to the so-called salt marshes is erroneous, and is founded upon the most complete misapprehension of the case before him. This necessarily resulted from the manner in which the case was treated. Had it been examined upon the evidence transmitted by Surveyor-General Day, or had it been opened for testimony on both sides, a correct conclusion would have been arrived at. As it is, it could scarcely be more erroneous in both its statements and conclusions.

The fifth ground of protest sets out the land surveyed out of the Pueblo in a general way only; but by looking at the Stratton Map and comparing it with the Eddy Red Line Map, it will be seen that the excluded land embraces two large gores, and affects wholly and in part more than one hundred hundred-vara lots. Not one of these lots but is held under deeds given by the Alcalde on town sales, and until Mr. Stratton made the discovery, all of them were deemed to be within the Pueblo limits. The title to these lots has, until the approval of the survey by the Commissioner, stood unquestioned; but since that time, lenders refuse to loan money on any of these lots, where before they were considered the choicest of security. This is simply stated for the purpose of showing one great interest affected by





the survey, and of the great caution and deliberation which should be manifested before such an interest is stricken down.

Besides these gores there is also a large quantity of land excluded lying along old Mission Creek and along Islais Creek, a great portion of which is held under title derived from the city.

#### STATUS OF THE CITY AS TO THE LANDS.

As the protest is the city's and as the opinion of the Commissioner treats largely of certain of the city's acts, it will be well to inquire as to the status of the city in this contest.

Under the Spanish-Mexican law, the Pueblo held the lands embraced within its limits in trust for the inhabitants; and hence when the United States made their grants of July 1, 1864, and of March 8, 1866, to the city of San Francisco, they were so made in trust.

The grant made by the fifth section of the Act of July 1, 1864, (Dwinelle's Col. History, addenda, p. 257) was made for the uses and purposes specified in the Van Ness Ordinance; and this Ordinance (same history, addenda, p. 217) was a grant to certain persons holding land within the charter-line of 1851, and confirming such Alcalde grants as are embraced within the gores surveyed out by Stratton.

The Act of March 8, 1866, (same History, addenda, p. 313) was a grant by the United States to the city, of all the land embraced within the decree of the Circuit Court, upon trust, for certain beneficiaries named in the Act, and this decree, upon which the Pueblo title rests, expressly provides that "This confirmation is in trust, for the benefit of the lot-holders "under grants from the Pueblo, town or city of San Francisco, "or other competent authority, and as to any residue, in trust "for the use and benefit of the inhabitants of the city." (Same History, addenda, p. 250.)

So that, the city has no interest in the lands in dispute, save that of a naked trustee. If a survey and patent are necessary, it is her duty, as trustee, to see that these are procured, to the end that her cestuis que trust may have their title perfected; but she cannot, as such trustee, set herself in hostility to her beneficiaries. Her sole duty as to those Pueblo lands is one of protection to her beneficiaries; in the land itself she has no interest whatever; nor can any of her acts in regard to these lands affect in any way, by estoppel or otherwise, any but herself. And yet, we are told, in the Commissioner's opinion, of the city's acquiescence in the Stratton Survey, of her buying certain lands from the State, of her having brought suit in which her counsel made certain admissions, of her having adopted the Tide Land Survey which followed Stratton's; and then we are told that by the city's having done these things, she, and those claiming under her, are estopped from questioning the Stratton Survey! That is, the proposition of law is, in effect, that what a person does in his individual capacity will estop him as a trustee; and that a trustee's act, in the violation of his trust, will estop his cestui que trust! And this estoppel is gravely invoked as against the cestui que trust, and said to be created by acts done or suffered by the trustee many years after it had in pursuance of its trust parted with all its interest to





its cestui que trust! The protest of the city, it is admitted, was on file and in full force at the time of all these pretended acts of the city -- a protest made and filed for her beneficiaries -- but we are told that these pretended acts (for they are incorrectly stated) operated a waiver of the protest!

It is always to be presumed that the acts of a trustee (and especially where the trustee is a municipal corporation) are consonant with his duty; and his various acts must be reconciled, if possible, where some are consonant, and others seem to be inconsonant, with his obligations as trustee. And so, in the present case, the protest of the city on behalf of her grantees and beneficiaries having been continued in full force and effect to the present day in despite of the efforts of interested parties to have it withdrawn, any act of the city in apparent derogation of this protest, must be very carefully scanned before we are authorized to conclude that the city has done anything in violation of her duty as trustee. But in truth, the city has never done anything so far as the record here shows, by way of acquiescing in Stratton's Survey, and nothing, which could conclude her on the most liberal interpretation of the law of estoppel. But even if she had, her beneficiaries could not be affected. She is bound to protect, so far as she can, all of her cestuis que trust, and any action of hers hostile to their rights must fall hurtless.

The opinion of the Commissioner evidently proceeds upon the theory that the city of San Francisco is acting in this matter for herself alone, and not for others; certainly, a stranger to the facts could come to no other conclusion.

These considerations, alone, would be sufficient to cause a reversal of the Commissioner's decision, for it is evident that they were the considerations which controlled and prompted it.

But we propose to show, beyond the shadow of a shade of doubt, that Stratton's Survey, so far as the eastern boundary of the Pueblo is concerned, is not only erroneous, but that there was not any excuse for the error.

Where, then, was the line of high-water mark of the Bay of San Francisco on the 7th day of July, 1846, which, according to the Decree, marked the Eastern boundary of the Pueblo?

This is the inquiry, and to answer it we resort to the uncontradicted evidence on this head transmitted to the Commissioner by Surveyor-General Day with his opinion.

The gentlemen who testify are Mr. Dwinelle, an old Californian, whose professional intimacy with Pueblo matters is well known; Henry F. Teschemacher, Mayor of the city from 1860 to 1863, inclusive; Alfred Robinson, at present residing in this city; Charles Brown; William P. Humphreys, at present and for many years past County Surveyor of this city and county; and Augustus F. Rodgers, connected with the Coast Survey, and at present residing in this city.

Mr. Teschemacher came to the State in 1842; Mr. Dwinelle in 1849; Mr. Robinson in 1829; Mr. Brown in 1829; Mr. Humphreys in 1849; and Mr. Rodgers in 1851. Each testifies of his own knowledge, the testimony of each is positive and clear, and it stands uncontradicted.





This testimony shows, beyond any room for hesitancy or doubt, that the two large gores, of which we have spoken, as also a large quantity of land around Mission and Islais Creeks, were not washed by the daily tides, and a great portion of it not even by the spring or monthly tides. And that the line of ordinary high-water mark is determined by the flow of the daily and not by that of the monthly tides is laid down in *Teschemacher v. Thompson*, 18 Cal. 21, and is settled law. Indeed, much of this land, called "tide-flowed", in the Commissioner's opinion, was a fresh-water marsh, as was testified by Mr. Teschemacher, Mr. Robinson and Mr. Humpherys -- and Eddy's Red Line Map, hereto attached, is but a confirmation of the testimony of these eminent witnesses.

We do not deem it necessary to quote from the testimony as it is on file in the Department at Washington, and can speak for itself. An examination of it will show that Mr. Stratton did not follow the decree in his survey, and that he left out of the Pueblo boundaries a large quantity of land which was "above ordinary high-water mark as the same existed at the date of the conquest of the country, viz: July 7, 1846." And of that which was so left out are the above-mentioned two gores, nearly every foot of which the city sold thirty years ago, and to which there is no other title for those in possession but Alcalde deeds, which were made in pursuance of these sales. A few of the lots are held under Alcalde Grants proper, but the most of them are held as stated.

In this connection we beg to call particular attention to the opinion of Surveyor-General Day accompanying the evidence taken before him, in which, by way of corroboration, he speaks of his own personal knowledge of these so-called salt marshes in 1851-52.

Furthermore there is an authoritative decision of the United States Circuit Court for the District of California, which is fatal to the Stratton Survey. This case is *Tripp vs. Spring*, and is reported in 5 *Sawyer*, at page 209. It was decided July, 1878, and is directly in point. The Commissioner, in his opinion, says that Mr. Justice Field in this case intimates that the Stratton line in its tortuosities and meanderings "makes a very singular boundary". The Commissioner could hardly have given the opinion a careful examination, or he would not have used the language in regard to it which he does. The Court does not intimate anything as to singularity of boundary; but on the contrary it holds decisively, and the case turned wholly upon it, that the decree could only be followed by surveying across the mouths of the little creeks and inlets emptying into the Bay of San Francisco, and not, as Mr. Stratton did, up and along the line of swamp land segregation. The case is decisive as to how the decree is to be followed in this respect, and we respectfully submit that the Department should be controlled by it, and not set at defiance. For confirmation of what we have said about this opinion and decision, we have attached a copy of it to this brief as an appendix.

If Mr. Stratton had simply followed up the shores of the little inlets, still most of the two gores would have been saved; but instead of doing this, he excluded the whole simply because in the early days it was marshy in places, and because a County Surveyor had segregated it as swamps and overflowed land.

And this naturally brings us to the segregation said to have been made in 1850, and upon which Mr. Stratton relies for





his high water mark. This segregation, the Commissioner thinks, is more controlling as to where the high-watermark was, than the testimony of competent eye witnesses. There is nothing in the Commissioner's opinion which shows such utter misapprehension of the subject as that which is said about this segregation. For the very fact that this land was segregated as swamp and overflowed or salt marsh, shows conclusively that it could not have been tide land: that is, was not covered and uncovered by the daily flow and ebb of the tides. Had it been washed by the daily tides, it would have belonged to the State by virtue of her sovereignty, and not by virtue of the Arkansas grant of 1850, or any other grant. The fact, therefore, that the County Surveyor treated this land as swamp, leaves the Stratton Survey without a piece of leg to stand on.

The Commissioner says: "If the so-called salt marshes "were below the ordinary high-water line of 1846, then they were "the property of the state without special act or grant of "Congress." This is true, but if they were below ordinary high-water mark, then they could not have been land known as salt marsh. The very fact, if it be a fact, that the lands were salt marsh, proves conclusively that they could not have been tide lands -- that is lands covered and uncovered by the daily wash of the tides. All this is evident enough; but the distinction between Tide, Swamp and Overflowed, and Salt Marsh lands, is so clearly laid down in People v. Morrill, 26 Cal., 353, that we beg to quote at length:

"1. The public lands of the State are distinguishable into two general classes: First, those which it holds by virtue of grants from the United States; second, those which it owns by reason of its sovereignty. The first class includes the grant of five hundred thousand acres, September 4, 1841; the grant of the sixteenth and thirty-sixth sections in each township for the use of schools therein; of seventy-two sections for the use of a seminary for learning, and of ten sections for public buildings, March 3, 1853; the grant of one hundred and fifty thousand acres for an agricultural college, July 2, 1862, and the grant of all the swamp and overflowed lands in the State belonging to the Government, September 28, 1850. The second class of lands, belonging to the State by reason of its sovereignty, includes the shore of the sea and of its bays and inlets, in the common law definition of the word "shore", that is, the lands usually overflowed by the neap or ordinary tides. (Pollard's Lessee v. Hagan, 4 How. 212; Goodlittle v. Kibbe, 9 How. 471; 13 How. 25; Teschmacher v. Thompson, 18 Cal. 21; Act of 1850 adopting the Common Law, Wood's Digest, 168.).

In the Act of 1855 (page 189) there is a direct expression of legislative opinion as to the character of the land owned by the State by virtue of her sovereignty. The Act is entitled "An Act to provide for the sale of the swamp and overflowed lands belonging to this State", but it is provided in the eighteenth section that the Act "shall not apply to or in any manner affect any lands belonging to this State by virtue of its sovereignty, below the line of ordinary high tide water, or the sea shore and the shores of the harbors on the coast of this State". In so far as the lands held by this grant are "swamp or subject to such periodical overflows as to injure or destroy the crops", (see circular of General Land Office, March 8, 1864, Wood's Digest, p. 746), the State became the owner of them by reason of the Act of September 28, 1850, commonly known as the "Arkansas Act".





From this examination it appears that the lands included in the defendant's patent are lands that became the property of the State by reason of its sovereignty.

2. None of the lands belonging to the State by reason of her sovereignty were offered for sale by the Act of 1855, as we have already seen. This Act was repealed by the Act of April 21, 1858 (Acts 1858, p. 198). That Act, by its title, provides for the sale of "swamp and overflowed lands", but the first section not only describes the lands offered for sale as "swampy and overflowed", but indicates their character still more precisely by referring to them as lands comprehended in the grant by Congress of September 28, 1850. By section thirteen all swamp and overflowed lands, situated in certain localities named, are permanently excepted out of the operation of the Act, and in so far as the State's swamp and overflowed land may be made up of "salt marsh", a right to pre-empt is reserved for six months to the owners of the adjoining arable land. The result is that nothing was offered for sale by the Act of 1858, except the lands falling within the description of the Arkansas grant of 1850; and as the land included in the defendant's patent is not within that description, it follows that the groundwork of defendant's purchase must be sought for and found, if at all, in subsequent legislation.

It is urged, however, on the part of the respondent, that it appears from the proviso to the first section of the Act of 1858, that the State by that Act, offered for sale its lands situate below ordinary high tide. The proviso is as follows: "Provided, that if upon the survey of such lands any portion thereof shall be found to be lands belonging to the State by right of her sovereignty, the moneys arising therefrom shall be paid into the Treasury of the State as other State revenues." This proviso is to be read in the light of the subject matter. It is well known that that portion of the swamp lands of the State known as "salt marsh" are threaded by channels of greater or less width, within the ebb and flow of the tide, which channels are of little or no use either in the way of fishing or navigation. They are but extensions of the "mud flats", and like them belong to the State by right of its sovereignty. While the principal purpose of the Act was to sell the swamp and overflowed lands, which the State held by its grant, still it was considered that that purpose could be best subserved by allowing purchases of salt marsh to include such channels, when reasonably necessary, within their survey. To that extent and under other such or kindred circumstances it is true that the lands belonging to the State by reason of her sovereignty were offered for sale by the Act of 1858. But none of these circumstances connect themselves with the lands included in defendant's patent. The words "if any portion thereof shall be found", etc., show very clearly that the Legislature considered the proviso as but a relaxation of the general rule in favor of a case which it regarded as exceptional.

3. The Act of April, 1859, is amendatory of the Act of 1858, but we do not consider that it enlarges the scope of the offer to sell contained in that Act. It applies to "persons who wish to purchase under this Act", (the Act of 1858) to land that is "swamp or swampy for the greater part", or, "that is subject to inundation at the planting, growing or harvesting season, so as to endanger or destroy the crops, taking the average season for a reasonable number of years prior to the year of 1850 as a rule of determination." If the Legislature had intended to offer all the lands for sale owned by the State by virtue





of its sovereignty, it is not to be supposed that a description so labored and so inapposite would have been adopted. The lands of the defendant's patent are neither swamp or swampy, nor is there any sensible connection between them and "crops"; and the "average" stated might very well have been spared in view of the fact that a state of "inundation" recurring with the regularity of the tides is the normal condition of those lands.

But reference is also made to the second proviso of the fourth section of the Act of 1859, and it is claimed that the Legislature intended to offer for sale indiscriminately all the lands which the State owned by reason of its sovereignty. The proviso is as follows: "Provided; further, that the said claim shall not exceed six hundred and forty acres, or measure more than one-half mile front, by legal subdivision, on any bay, lake or navigable stream." The lands included in the patent have in fact no relation to any bay or lake or navigable stream, and, therefore, if they should be considered as without the Act, the just operation of the proviso would be in no manner interfered with. The swamp and overflowed lands offered for sale and claimed by grant, border to a great extent on bays, lakes or navigable streams, as a matter of fact. They extend down to the line of ordinary high water, and the lands claimed by the State by right of sovereignty extend up to the same line, and the only purpose of the proviso was to limit the number of acres which the citizen could buy land-ward from that line and to limit also the extent of the frontage upon it. A conveyance by the State, bounding upon the sea, or upon a bay, or a navigable stream, would extend to high-water mark. The proviso is then entirely reconcilable with the views which we entertain as to the real purpose of the Act."

See also, Fay v. Rondell, 32 Cal. 354.

The lands excluded by the Stratton Survey, on the authority of the Potter segregation, were, therefore, according to the testimony of Teschemacher and others, partly swamp and overflowed and partly salt marsh; and such lands, as said in the opinion quoted, "extend down to the line of ordinary high water;" while the tide-lands, that is, those held by the State by virtue of her sovereignty, "extend up to the same line."

And it is also clear, that it is only that small portion of the salt marsh made up of the tide-flowed inlets running up from the sea which could be denominated Tide Land. But that even these channels could not, simply because they were tide-flowed, be excluded from a Mexican grant is well settled.

Tripp v. Spring, *supra*.

United States v. Pacheco, 2 Wall. 587.

Ward v. Mulford, 32 Cal. 369, 370.

Thus we see that the only evidence offered to sustain the survey gives it its death wound.

Having thus shown that the survey did not follow the decree and is grossly erroneous, we shall now show quite as conclusively that there was no excuse for the error; that even the plea of ignorance can avail the Surveyor nothing.

In the Commissioner's opinion it is stated that when the City and County Surveyor was applied to for information by





Mr. Stratton, he furnished him with the field notes of a segregation, but stated that he "has made no survey of the water line in front of the city, as shown by the water-lot Act and map of 1851."

The Commissioner relies upon this segregation as having been an early survey; but the truth is there is not a syllable or line in the record which shows when this segregation was made. Potter says in his letter to Stratton, "With this you will find the copy of field notes and records of the line of segregation as returned to the Surveyor-General of California;" but he furnishes no date as to when the segregation was made. And endorsed on the field notes, referred to in his letter, are the words: "The within is the description of the line of Segregation of salt marsh and tide lands in San Francisco County, according to the surveys returned to the Surveyor-General;" but no date is given.

There is, we repeat, no testimony showing or tending to show that the segregation was the result of a survey made at an "early day."

Fortunately, we can supply the time with sufficient certainty from the statutes of the State; and it will be found that the survey was not made at an early, but at a late day, all of which Mr. Stratton knew, or was bound to know.

The State passed no Act for the sale of swamp and overflowed land until the year 1855, (Statutes of California, 1855, p. 189,) and the County Surveyors had no duties to perform in and about such lands until that time.

In 1861 the State passed an Act for the "Reclamation and segregation of swamp and overflowed and salt marsh and tide lands donated to the State of California by Act of Congress" (Statutes 1861, p. 355.) and section 19 of said Act provides as follows:

"The County Surveyors of the several counties of this State shall, immediately after the organization of the Board of Commissioners, proceed to segregate the swamp and overflowed lands within their respective counties from the high lands in said counties and make complete maps of all the swamp and overflowed lands within their respective counties, in legal subdivisions of sections and parts of sections, together with a tabular statement of all such lands as have been sold by the State, and under what Act the same were sold, of all lands claimed and by whom claimed, and as nearly as possible by what title the same are held, and file the said tabular statement in the County Recorder's office of their respective counties; also transmit duplicates of said maps to the Surveyor-General of the State."

This is the first segregation ever provided for by the State, and as the Act was passed in May, 1861, it could not have been earlier than the middle of the year when the segregation was effected. Thus we see by confirmation strong as proof of holy writ, that the survey relied on was not a survey made at an "early day", but made at a late day, and thus hardly worth setting up against the testimony of "six respectable witnesses" who saw the condition of things long before any natural and artificial changes had been made." Indeed, so many changes had been made by the year 1861, that it is a puzzle how any such line of segregation as that returned to the Surveyor-General could have been arrived at in the field. The truth is, that it never was surveyed in the field -- at least in 1861 -- but must have been taken from some of the early maps, which show quite clearly the





extent and character of the land, and the little inlets that for a short distance penetrated into it. If made at all, it was made for a purpose -- and that purpose was to cover this land with swamp land locations, as is attested by the fact of many of such locations having passed to certificates of purchase.

Besides all this, that it was a manufacture is clearly evident from the fact that there is nothing, as we are prepared to state from personal examination, to be found in the records of the County Surveyor showing that any such line of segregation was ever run by him. And the records further show that the earliest swamp land survey ever made in the county of San Francisco was made on August 25, 1863, and the latest on February 2, 1867; and all of these were made at the instance of private parties, for particular pieces of land. Nor is there anything in the Surveyor's office to show that the County Surveyor ever made in 1850, or at any other time, such a survey as the Commissioner says Stratton relied on.

The Eddy map of 1850, which was the official map of the city, and was made by Eddy as the city surveyor, shows plainly the topography of these so-called marshes, and at the same time shows the line of ordinary high water to be where he put it on the Red Line Map, and where it has always been recognized to be.

It is also worth while to note that the segregation provided for in the Statute is that of swamp and overflowed land, and therefore of land having an entirely different character from tide land; and the title of the Act clearly shows that the land is that granted by the Arkansas Act of 1850, and not land owned by the State by virtue of her sovereignty.

It hence follows that this segregation could not have been intended, as the Commissioner says it was, "to show the line of ordinary high water at the time of the conquest, and to indicate the tide-flowed lands". The only authority there could have been for such segregation, was that under the Act of 1861, and this was for the ostensible purpose of providing a better scheme than the one then in force for the sale and reclamation of the swamp lands. Nor could such a segregation, by any possibility, show the line of high-water mark. It could only show the line separating the marsh from the dry land, and not the line separating the tide from the marsh land.

To show still further the misapprehension, it is only necessary to quote in full the law of April, 1850, to which the Commissioner alludes. It is section thirteen of an Act prescribing the duties of County Surveyors (Statute 1850, pp. 170-171), and reads as follows:

Section 13.--- Each County Surveyor, immediately after making any survey, except surveys of city or town lots, shall make out a copy of the field notes and plat, and transmit the same to the Surveyor-General, indicating plainly upon the plat at what point of any line, any river, or stream, or county line is touched or crossed.

At this time there was a City Surveyor, the city and county not having been consolidated into one government until the year 1856, and the County Surveyor would hence have nothing to do with surveying the boundary lines of the city; but independently of this, it can hardly be seriously claimed that the language quoted could be so distorted as to mean what the Commis-





sioner says it means. He certainly could not have read the section, or if he did, he could not have placed it alongside of what Mr. Potter says was done. The law says plainly that the Surveyor shall designate on his plat the point at which any of the lines are crossed by a river, stream or county line. It is almost laughable to be told that this means that he should "designate the boundary lines of counties and cities, and designate "their intersection and distance from coast lines or streams", and that the eastern boundary line of the Pueblo was to be determined in this way.

What Mr. Potter says was done was to "segregate" the swamp land -- a segregation expressly provided for in 1861. He particularly tells Mr. Stratton that he had "made no survey of the water line in front of the city".

Having thus shown that the survey relied on by Mr. Stratton was not made at an "early day" and was not made with any view to finding high-water mark, we shall show that there was a survey made at an early day of the identical line which Mr. Stratton ostensibly was looking for, but which survey he chose to ignore. But stranger still, although he completely ignored it, he says he followed it! The Stratton Survey is a marvel of absurdity, but the conduct of the surveyor is, if anything, even more absurd. As we said before, he was either incompetent, reckless or worse.

He says that on account of the natural and artificial changes he was compelled to rely entirely upon the first official map of the city made by Wm. M. Eddy, the first City and County Surveyor, and which he made the basis of his survey. To show how he relied upon it, it is only necessary to state that Eddy in that map shows the line of ordinary high-water mark to be exactly where we claim it to have been, and where it has been recognized to be ever since the year 1851. More than this, there has not been a map of the city, and one cannot be produced having official sanction which does not show it to be where it was put in 1851 -- just ten years before the "early-day" survey relied on.

It was necessary in 1851 to find out where this line was; for in that year the State granted to the City of San Francisco for ninety-nine years certain lands bounded on one side by lines of certain streets, and on the other by "natural high-water mark", and provided that a "correct map of said boundary line distinctly and properly delineated by a red line", should be deposited within thirty days after the passage of the Act, in the offices of the Secretary of State, of the Surveyor-General and of the Surveyor of the City of San Francisco. (Dwinelle's Col. History, addenda, p. 265.) This was all done; the survey was made, the maps platted and properly authenticated and red-lined, and from 1851 up to the present time this red-line map has been kept as a perpetual official monument of what Mr. Stratton says he was so eagerly in search of. The outside red line was made by the Act the water front of the city, while the inside red-line indicated the line of ordinary high-water mark. Between the two lines were the so-called Beach and Water lots granted to the city for ninety-nine years. By this map, as we said at the outset, all lawyers and conveyancers have been governed ever since the decree of 1865 establishing the pueblo, as correctly showing the ordinary high-water mark called for in the decree. And yet it will be found on an examination of the map made by City and County Surveyor Humphreys and now on file with





the papers in the case, that this Red Line has been changed by Stratton along its entire length!

It is thus plain that there was no excuse for Mr. Stratton's falling into error as to the eastern boundary of the Pueblo, and that he did not make his survey, as charitably urged in his behalf by the Commissioner, "according to the light of the best evidence at command". Not only, however, was there this map, but there was also the Coast Survey Map, referred to in the testimony of Mr. Aug. F. Rodgers, showing the identical line which Mr. Stratton so yearned to find, but which by a vigorous closure of both eyes, he failed to see.

We shall try to procure in time, authenticated copies of both of these maps, to attach to this brief; but should we fail in this, we shall send them in a few days after the mailing of the brief.

But these maps were not the only resource at hand for a correct determination of the line sought; there were a number of persons in San Francisco, who could have given Mr. Stratton valuable information. It was perfectly easy and practicable for him to procure the evidence taken before Surveyor-General Day, and much other evidence of the same kind; but he seems to have made no effort in this direction, and to have cared to find nothing else but the segregation of 1861. The "natural and artificial changes" he speaks of had nearly all taken place by that year, and yet he takes a survey made in that year for the purpose of determining the natural condition as it existed fifteen years previously.

As to the Alleged Acts constituting an Estoppel against the City, we think we have already said enough; but perhaps it will not be considered out of place to correct some of the Commissioner's erroneous impressions; and in this, we shall be brief.

First -- As to the Tide Land Map, and the Order of the Board of Supervisors adopting it.

The Tide Land Commissioners were authorized (Statutes of 1867-68, p. 717, Section 4) to take possession of all the salt marsh and tide lands belonging to the State, and to map the same; and also to establish a water-front where their jurisdiction extended. As for their having taken possession of or having surveyed the lands on the east side of the Pueblo excluded by Stratton, they did no such thing. A great part of it not only was not tide or salt marsh, but never had been tide or salt marsh. On the contrary, it was nearly all dry land, and a very large proportion of it was covered with store-houses and residences. In fact, the two gores above spoken of, were in 1868, and had been for years before that time as thickly settled as any portion of San Francisco. What they did do was to survey into lots, blocks and streets for the purpose of public sale, the tide lands in the lower part of the city, out to twenty-four feet at low water, "in accordance with the Official Map Survey of the City of San Francisco" as required by law.

Now this official map survey of the City included all the land on the easterly side of the Pueblo excluded by Stratton; but in preparing their map, the Commissioners not only included this, but included a large quantity of other up-land. This was not done to show that they assumed jurisdiction over all





land shown on their map, but simply to show the connection of their survey with the official map of the city -- and the land claimed to be within their jurisdiction was designated by being colored blue. All this is evident from the title of the map, which reads, "Map of the Salt Marsh and Tide Lands, lying under water, south of Second street, and situate in the City and County of San Francisco", and from the ordinance of the Board of Supervisors, adopting this Tide Land Map. After declaring that the streets laid out by the Commissioners shall be open public streets it is provided that the City and County Surveyor "shall draw and compile, delineate and place upon the map of the city and county", the streets and avenues delineated upon the Tide Land Map; and the map is spoken as one of lands lying under water (Order No. 911 in Municipal Reports, 1871-72, p. 589.) What the city did was but to tack on to their official map the extension created by the Survey of certain lands lying under water. This Tide Land Survey had no more to do with the segregation line followed by Stratton than if it had never been in existence, nor was any water-front established with any reference to it. The water-front line of 1851 was preserved by the Statute under which the Commissioners acted, and they could not disturb it in any particular, and this water-front is directly east of a great portion of the land excluded by Stratton. The water-front was simply extended southerly by the Commissioners, so as to include the lands placed within their jurisdiction. As has been said, the Tide Land Map exhibited a great portion of the city over which the Commissioners had no jurisdiction, and a portion of this was the land excluded by Stratton. As Stratton's Survey showed a large portion of the city outside of the Pueblo limits, it was thought advisable to designate the land excluded in some way, and so the two gores of which we spoke at the outset were colored brown, while that around Mission and Islais Creeks was colored green.

But the pregnant fact is, and it should be controlling when this map is talked about, that the line of high water is placed precisely where it was placed by Eddy in 1851. In other words, instead of following Stratton's line of high water, as the Commissioner seems to think, the Tide Land Commissioners pay no attention to it whatever. And all the land without exception, which Stratton's Map shows to be outside of the Pueblo, would, by the Tide Land Map, be inside of it.

This is all there is of the matter, and we think the brief statement of facts given are sufficient to show that neither the Tide Land Commissioners, nor the City by any act, word or deed, so far as the Tide Land Survey was concerned, ever agreed with Mr. Stratton that the land excluded by him, was, or ever had been since 1846, a portion of the Bay of San Francisco.

Secondly -- As to the sales alleged to have been made of the excluded land. The Tide Land Commissioners, by the Act of 1868, were compelled to sell at public auction, all the lands within their jurisdiction. We think we are safe in saying that not a single lot in the gores excluded by Stratton was ever offered at public sale by the Commissioners. They only offered and sold at public auction the lands lying under water. Had any of this land been attempted to be sold at public auction, over the heads of those who had city titles and who had been in possession for many years, there would have been a popular uprising.

They did not offer to sell even all the lands lying under water, for in many cases there was some sort of possession of some of these lands, much money had been expended by the assumed owners in acquiring titles supposed to be good, and for





these considerations it was thought there were equitable claims which should be respected. For these reasons the powers of the State Board were extended by the Act of 1870 (Statutes 1869-70, p. 541), and by that of 1874 (Statutes 1873-74, p. 858, sec. 4), and permission given to the Board to compromise with parties claiming adversely to the State as to lands lying under water. (Compare Section 1 of Act of 1869-70 with Section 5 of the same Act, and note that Section 4 of the Act of 1864 speaks only of Tide Lands.) It was by virtue of compromises authorized by these later statutes that there has arisen a conflict of title between parties holding under the city and parties holding these compromise deeds.

The State Board at first followed their authority in only compromising as to lands lying under water; but as Stratton had surveyed out a large portion of the Pueblo, thus apparently clouding the city title, the State Board, for some reason or other, stretched their authority, and advertised for persons holding titles within the disputed territory to come to their office and get a State deed. Some went, but many paid no attention to it, for they felt amply secure with the title they had, and did not choose to pay even a nominal sum for a worthless thing -- worthless for three reasons; firstly, because the State had no title to give; secondly, because the lands were not under water, and hence the Commissioners had no authority to compromise by the express letter of the Statute; and thirdly, because if the excluded land was swamp, and was properly excluded, it passed to the State under the Arkansas Grant of 1850, and was covered (how much we do not know) by swamp land certificates of purchase.

But this thing, meant in good part at first, bore just such fruit as might have been expected. After some years, certain persons, finding those holding city titles, careless about availing themselves of the generosity of the Commissioners in offering to give what they had no power to give, preferred claims to the State Board based upon pretended occupation in the early days of the city. This culminated in what is popularly known as the "Ellis Grab", wherein the city herself was startled to find that a large quantity of land which had been set apart to her for for (sic) street and sewer purposes, had been conveyed by the State Board to one Ellis, under its assumed power of compromise. The proceeding was a wanton and outraneous one, as was clearly developed on an investigation by the Legislature; and that the title conveyed by the Board is worthless was as clearly developed when it underwent examination in the case of Tripp v. Spring, supra. The Report of the Committee on the "Ellis Grab", as well as the report of the case of Tripp v. Spring are appended to this Brief. We have also appended a deed for the Ellis land to the United Land Association, together with the Articles of Incorporation of that Association, showing that title is now held as a speculation. That any one ever entered into possession under one of these compromise deeds, and ever made valuable improvements "under the belief that the title of the State acquired by him was undisputed", is a myth pure and simple. If any improvements have been made on these Mission Creek lands since the State deed by any one, it will be found that in every case the improver had both the State and City title. That there were "numerous purchasers" of these so-called salt-marsh lands is not in any sense true. They were not purchasers at all in the sense of having bought at any offering of the property by the Tide Land Commissioners; but they were, in every single instance, parties who were claiming adversely to the State, and with whom the State Board assumed the power to compromise under the sections above cited. And in this same category stands





the alleged fact of a purchase by the city from the State Board, if it be a fact, the city for the sake of greater caution having taken, as an adverse claimant, a compromise deed the same as any other adverse claimant.

Thirdly -- As to the suit against Ellis. The "Ellis Grab" we have mentioned above and have shown how it originated. As the land deeded by the State Board to Ellis covered a large part of the land embraced in a statute authorizing the city to take certain lands for a sewer and street, a suit was brought for the purpose of setting aside the State deed. It is true that in this suit the city attorney alleged ownership in the city from the 27th day of March, 1874, and admitted, for the purpose of the trial, that previous to that time ownership was in the State. Why he pursued this course, is not for us to inquire, but it seems that he rested his case upon the theory that the Statute of 1874 (Statutes 1873-74, p. 711), operated a grant, but that if it did not, the Attorney-General had not advised the conveyancer to Ellis. The District Court, however, held otherwise on both points, and the case is now on appeal to the Supreme Court of the State. #

But it is evident that the Legislature did not consider the lands lying along Mission Creek as belonging to the State; for in this very Statute, authorizing the street and

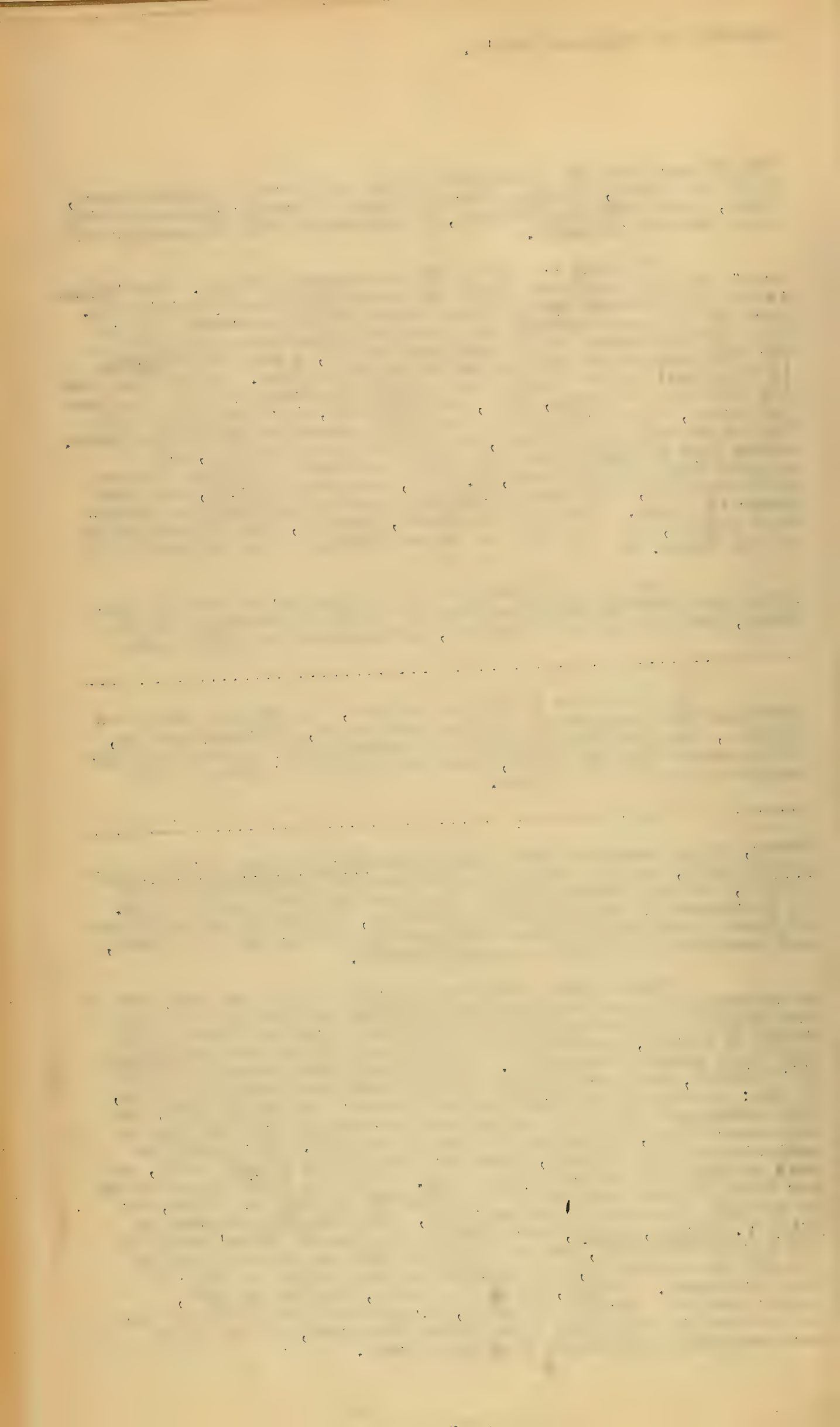
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# Since this brief was written, the Supreme Court has affirmed the judgment of the District Court, expressly saying, however, that it does not wish to be understood as deciding anything except the one point, that the statute of 1874 did not operate a grant to the city.

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sewer, it is conceded that these lands were held in private proprietorship, and the city is authorized to purchase from such owners, and to condemn where such purchases could not be made. In pursuance of this authority the city, bought large quantities of these lands from private proprietors holding the city title, and constructed an immense sewer therein.

Every lawyer must try his case in his own way; but it is difficult to see how the city could be estopped by anything contained in the record of the Ellis suit from questioning the Stratton Survey, and still more difficult to see how her cestuis que trust could be estopped. In the Ellis suit acting through her counsel, she simply chose to rely upon one source of title, to wit: that acquired from the State under the Act of 1874; but this would not estop her in another proceeding from setting up any other title, or as many titles as she had. Nor could the admission of her counsel, made for the purpose of one trial, be used against her in any other trial. That the title acquired by her from private proprietors is paramount to that of Ellis, or to any one standing in his position, was specially decided in Tripp v. Spring, supra, for in that case one of Ellis' grantees was partly plaintiff, and it was held that he had no title as against the defendant, who claimed as beneficiary of the Van Ness Ordinance. Beside, as we have seen, the Act of 1874, authorizing the street and sewer, recognized that the State had no interest in the lands lying along the creek, all of which were excluded by Stratton from his survey.





It seems that the suit was brought to set aside the deed only as to the bed of the upper portion of Mission Creek, and not as to any of the lands lying alongside its banks, and so there was not involved any question as to whether the State or City title was paramount as to such lands. The only question was, did Ellis under his State deed, or the city, under the Act of 1874, have the better right to the upper portion of Mission Creek?

The mere fact that we are called upon to discuss the facts of this case, furnishes an interesting commentary upon the manner in which the Stratton Survey has been treated by the Commissioner, as the survey was transmitted in 1869, and the Ellis suit was tried in this city last year, and the record sent on without the knowledge of anyone save those interested in the "Ellis Grab".

If Mr. Justice Field is right in Tripp v. Spring -- and this case must stand as authority until overruled by a higher tribunal than the Circuit Court for this District -- then the city holds the legal title, in trust, for all the land involved in the Ellis suit, and if there be no beneficiary, then she holds it divested of the trust.

Dupond v. Barstow, 45 Cal. 446.

We have thus hurriedly gone over all the Acts alleged in the Commissioner's opinion by way of estoppel against the city, and we have shown that the texture of each and every of them is slighter than gossamer; that there is no substance in them; and that the Commissioner could not have had the requisite data before him on which to base a correct opinion.

That the city could have acquiesced in a survey which threw into the Bay of San Francisco the land which she sold as pueblo land thirty years ago, is too absurd for belief. Stratton's Survey has been subject of ridicule by every one who knew anything of it, and there is no one bold enough to say it was made on correct principles, or that it followed the decree of the Court. It ought to be sustained solely on the ground of expediency; on the ground that to set it aside would be to complicate titles. Never was there a greater delusion. The fact is the other way. Titles have rested on the fact that the shoreline was in a certain place; this line has remained undisturbed, and has become a great landmark of property; and, now, at this late day, we are told that this line is all wrong and must be moved back for at least half a mile, so as to uncover for the spoiler, millions of valuable property. Every map made of the city, official or otherwise, shows the line of high-water mark to be where Eddy established it in 1851; and a map made official since Stratton's survey, shows the line to be in the same old place. Does this look like acquiescence? On the very land left out by Stratton the city has enforced the outside land assessment under Ordinance 800, confirmed by Act of 1868, and amended the same year (Statutes 1867-68, pp. 379 and 410.) Does this look like acquiescence? The city has maintained her protest against this outrageous survey, notwithstanding great pressure brought against her supervisors to withdraw it. Does this look like acquiescence?

It would have been the easiest thing in the world for Mr. Stratton to make a correct survey of the Pueblo, if he had been so disposed. But he was not so disposed. The land marks were right under his eyes, but he refused to see them. The





Red Line Map, with which every lawyer, conveyancer, land office clerk, and surveyor are perfectly familiar, has hung up in the Couty (sic) Surveyor's office ever since 1851; it has been taken into Court hundreds of times; and yet Mr. Stratton, of all the men in the world who should have known of it, surveys and surveys without any apparent knowledge of its existence. Instead of seeking this information, which could have given him what he manifested such apparent eagerness to find, he goes nosing after a swamp land segregation made in chambers in 1861, for the purpose of arriving at the line of high water mark as it existed in 1846! To let this survey stand would be a reproach to the department; if it shall have the effect to permanently establish the eastern boundary of the Pueblo, it will unsettle titles as they have never been unsettled in this city; and it will let the spoiler forth to reap a rich harvest from his victim.

That the Commissioner committed a grave error in his decision, natural under the circumstances, there can be no doubt, and we are sure that he himself will only be too glad to see the matter righted.

We are entirely satisfied with the opinion of Surveyor-General Day, and are equally satisfied that the case could not be better disposed of than to order a survey according to that opinion.

The following maps, illustrative of the argument, are either appended to the brief, or will be sent within a day or two:

1. Copy of Red Line Map.
2. Copy of Coast Survey Map, referred to by Mr. Rodgers in his testimony.
3. Copy of Official Map, showing blocks and streets affected by the Stratton Survey within the gores south of Market Street, and also the lands lying along Mission and Islais Creeks.

Edward R. Taylor,  
Jarboe & Harrison,  
E. J. Pringle,  
Attorneys for sundry Lot Owners.

OPINION IN CASE OF TRIPP VS. SPRING.

.....x  
:  
C. C. Tripp, :  
vs. :  
F. S. Spring :  
:  
.....x

Circuit Court, District of California, July 29, 1878.

1. Eastern boundary of San Francisco.--

According to the decree in the Pueblo case, the Bay of San Francisco is the eastern boundary of the land confirmed to the City of San Francisco, the line being that of ordinary high-water mark as it existed on the seventh of July, 1846.





2. Mission Creek no Part of Boundary.--

Mission Creek constitutes no portion of the Bay of San Francisco. The boundary line of the tract confirmed crosses the mouth of all creeks running into the bay.

3. Pueblo Lands.--

The laws of Mexico, relating to lands to be assigned to pueblos, required that such lands should be laid out in a square or prolonged form, according to the nature of the country, and, as far as practicable, have regular lines for boundaries. The decree of the United States Circuit Court in confirming the claim of the City followed this requirement, and gave boundaries which could be easily ascertained, and which formed as compact a body as the situation of the country would permit.

4. State's Title to Tide Lands.--

The general doctrine that the State of California hold the title to soils under tide waters within her limits is asserted; but such title could only devolve upon her where it had not been previously granted to other parties by the sovereignty from which the United States acquired the country, or been subjected to trusts which require its disposition in some other way. If it were acquired by the United States charged with any trust, the disposition of it, in the execution of that trust, will override any claim of the State.

5. Treaty Obligations.--

The obligations which the United States assumed by the treaty with Mexico, was to protect all rights of property acquired under the laws of that country. The property rights of pueblos, equally with those of individuals, were entitled to protection, and in the legislation of Congress provision was made for their investigation and confirmation. The right and power of the Government in the execution of its treaty obligations to protect the claim of the City of San Francisco, as successor of the Pueblo, were superior to any subsequently acquired rights or claims of the State, or of individuals.

6. Decree Fixes Boundary.--

The decree confirming the claim of the City having fixed the Bay of San Francisco at ordinary high-water mark as its eastern boundary, this line cannot be changed by the Surveyor-General or any department of government. The Act of Congress of March 8, 1866, confirmed the claim as described in the decree, and also relinquished all interest of the United States to the lands embraced by it, subject to certain exceptions and reservations. Any patent of the United States which may hereafter be issued to the City from the Land Department at Washington, cannot affect the title already vested in the City and those claiming under it. The confirmation approved and affirmed by the Act of Congress will control any patent which the department may issue.

Before Mr. Justice Field.

This was an action for the possession of a parcel of land within the City of San Francisco. The case was tried at the July term of the Court, before Mr. Justice Field, without a jury, by stipulation of parties. The facts are sufficiently





stated in the opinion of the Court.

Philip G. Galpin, for the Plaintiff.

E. J. Pringle and A. Campbell, Sr.  
for the Defendant.

Field, J.

This is an action for the possession of a parcel of land within the City of San Francisco, constituting a portion of the block bounded by Mission, Howard, Seventeenth and Eighteenth streets, and designated on the map of the city as block sixty (60). The plaintiff is a citizen of Illinois and asserts title to the premises under a conveyance executed by the State Board of Tide Land Commissioners, in November, 1875, to one Geo. W. Ellis, through whom he derives whatever interest he possesses. The defendant is a citizen of California, and claims the ownership of the premises by conveyance from parties who acquired the interest of the city of San Francisco under the ordinance known as the Van Ness Ordinance, and the confirmatory legislation of the State and of the United States. The case is believed to be a test one, and it is stated that upon its disposition numerous other cases, depending upon the efficiency of the deed of the Tide Land Commissioners, will be determined.

The contention of the plaintiff is that the premises in controversy were, on the admission of California into the Union, either lands covered by the tide waters of the bay of San Francisco, and that their title then vested in the State, by virtue of her sovereignty; or that they were, upon such admission, salt marsh lands, which at once passed to the State under the Act of Congress, of September 28, 1850, known as the Swamp Land Act; and that in either case the title of the State was conveyed to Ellis by the deed of the Tide Land Commissioners. The statute providing for the appointment of these Commissioners, makes their deed prima facie evidence of the regularity of their preliminary proceedings, and of their sale, and of title and right of possession in the grantee. (Laws of 1867-8, p. 720.) And the plaintiff also contends that this prima facie evidence cannot be controverted in an action at law until the defendant has connected himself with the original source of title.

The premises are situated where formerly was a stream called Mission Creek, running up from the waters of a bend in the Bay of San Francisco, known as Mission Bay. They are distant about a mile from the mouth of the creek. All of that stream which covered any portion of block sixty (60) is now filled in, and upon the land thus formed, and adjoining lands, several buildings have been erected, which are occupied as private residences. Whether the waters of the bay were ever carried by a tide over the lands is a matter upon which the evidence is conflicting. The creek was often swollen by water from the adjacent hills so as to overflow its banks, and the tide sometimes, though not regularly, forced back the waters of the creek, so as to cause a similar overflow. But from the view we take of the case it is immaterial whether the lands could ever properly be termed tide lands or marsh lands, whether they were at any period covered by the daily tides, or lay beyond their reach at their highest flood. The record of the proceedings and the final decree in the Pueblo Case have been given in evidence, and from them it appears that the premises are situated within the limits of the tract confirmed to the City of San Francisco. This tract embraces so





much of the upper portion of the peninsula, upon which the city is situated, above the ordinary high water mark of 1846, as will contain an area of four square leagues, being bounded on the north and east by the bay of San Francisco, on the west by the Pacific Ocean, and on the south by a due east and west line, drawn so as to include the area designated, subject to certain deductions which it is not material to mention in this connection. Mission Creek never constituted any portion of the Bay of San Francisco any more than the Sacramento River constitutes a portion of the Bay of Suisun, or the Hudson River a portion of the Bay of New York. As the demanded premises lie where Mission Creek formerly existed, or where its banks were, they necessarily fall within the tract confirmed to the city. The boundary of that tract runs along the bay on the line of ordinary high-water mark, as that existed in 1846, crossing the mouth of all creeks running into the bay, and that of Mission Creek among others. #

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#This line of ordinary high-water mark was established by the Municipal Authorities of the City of San Francisco, in 1851, under what is known as the first water Lot bill (Stats. 1851, p. 307.) The State, by that act, granted to the City of San Francisco, for ninety-nine years, the use and occupation of certain lands, bounded on one side by the lines of certain streets, and on the other by the "natural high-water mark;" and the statute provided that a correct map of said boundary line, distinctly and properly delineated by a red line," should be deposited within thirty days after the passage of the Act in the offices of the Secretary of State, of the Surveyor General, and of the Surveyor of the City of San Francisco. The outside red line was made by the act of the water front of the City, while the inside red line indicated the line of ordinary high-water mark. Between the two lines were the so-called beach and water lots, the use and occupation of which were granted to the City. It is matter of history that the survey was made as provided in the statute, the maps platted and red lined, and deposited with the proper custodians, where they have ever since remained.

By this well known "red line map", all parties since 1851, have been governed in the matter of determining the line of ordinary high-water mark. And this line, as shown by the above mentioned map, crosses Mission creek, and all the creeks and sloughs that in 1851 emptied into the Bay of San Francisco; but all of which, with the exception of a portion of Mission Creek, have long since been filled up, and built over.

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The boundary would have been a very singular one had it followed the windings of that creek and its branches, wherever the tide waters of the bay may have flowed. The laws of Mexico, relating to lands to be assigned to Pueblos, required that such lands should be laid out in a square or prolonged form, according to the nature of the country, and, so far as practicable, have regular lines for boundaries. The decree of the United States Circuit Court in confirming the claim of the city followed this requirement, and gave boundaries which could be easily ascertained, and which formed as compact a body as the situation of the country would permit.

The general doctrine that the State holds the title

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to soils under tide waters within her limits is not questioned. Her proprietary right to such soils has been asserted in numerous instances, both by the State and Federal Courts. It was expressly recognized by the Supreme Court of the United States in the recent case of Webber v. The Harbor Commissioners, which originated in this city (18 Wall, 65). Though the United States acquired the title to the lands under tide waters from Mexico equally with the title to the uplands, they held it in trust for the future State. The ownership and consequent right of disposition passed to her upon her admission into the Union. But this ownership could, of course, only devolve upon her where it had not been previously granted to other parties by the former sovereign, or subjected to trusts which would require its disposition in some other way. If it were acquired by the United States charged with any trust, the disposition of it, in the execution of that trust, will override any claim of the State.

That a Pueblo of some kind existed at the site of the present city of San Francisco upon the cession of the country from Mexico; that such Pueblo possessed proprietary rights in certain lands, and that the city succeeded to such rights, are no longer open questions for discussion or judicial examination. They have been determined by repeated decisions of the federal courts; and however much counsel may be disposed to question the original soundness of those decisions, the conclusions reached must be received as established facts, and all the legal consequences flowing from them accepted. The obligation which the United States assumed by the treaty with Mexico was to protect all rights of property, acquired under the laws of that country. The property rights of Pueblos, equally with those of individuals, were entitled to protection, and in the legislation of Congress provision was made for their investigation and confirmation. The right and power of the Government in the execution of its treaty obligations to protect the claim of the City of San Francisco, as successor to the Pueblo, were superior to any subsequently acquired rights or claims of the State or of individuals. (See Teschemacher v. Thompson, 18 Cal. 28).

It is undoubtedly true that until the confirmation of the city's claim the Government retained the right to control the use and disposition of the Pueblo lands, where, by action of the officers of the Pueblo, or of the city, its successor, they had not been previously vested in private proprietorship; and, perhaps, had Congress, in terms so declared, the swamp lands within the limits of the Pueblo may have been alienated to other parties. There is no occasion, however, to express any opinion on this point, as to only Act of Congress to which reference is made, that of September 28, 1850, was clearly not intended to apply to any lands then held by the United States charged with the equitable claim of others, which they were by treaty bound to protect.

Our conclusion is that the premises in controversy constitute a part of the tract confirmed to the city by the decree of the United States Circuit Court, entered on the 18th of May, 1865. That decree became final by the Act of Congress passed on the 8th of March, 1866, which was followed by a dismissal of the appeal taken to the Supreme Court.

The defendant has shown that the parties, through whom he claims, were in peaceable, actual possession of the lands in controversy at the time the Van Ness Ordinance took effect, and on the passage of the confirmatory Act of the Legislature of the State, and had made valuable improvements upon it, and





thus acquired the title of the city. He has thus brought himself in connection with a title superior to that of the plaintiff. It follows that judgment must be entered in his favor.

The suggestion that the survey of the Pueblo claim forwarded to the Land Department at Washington, follows the banks of Mission Creek, cannot have any weight in this case. The decree confirming the claim of the city fixes the Bay of San Francisco at ordinary high-water mark as its eastern boundary, and this line cannot be changed by the Surveyor-General, or any department of Government. The Act of Congress confirms the claim as described in the decree, and also relinquishes all interest of the United States to the lands embraced by it, subject to certain exceptions and reservations not material to be now considered. Any patent of the United States which may hereafter be issued to the city, from the Land Department at Washington can neither add to or take from the title already vested in the city and those claiming under it. The confirmation approved and affirmed by the Act of Congress will control any patent which the Department may issue. A patent of the United States operates, as was held by the Supreme Court, in a recent case, in two ways: "It is conveyance by the Government", says the court, "when the Government has any interest to convey; but where it is issued upon confirmation of a claim of a previously existing title, it is documentary evidence of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights, because it also embodies words of release or transfer from the Government. (Langdeau v. Hanes, 11 Wall. 521). It was a legislative confirmation of which the Court was here speaking, and in the case of San Francisco, we have both a judicial and a legislative confirmation, the latter sanctioning and affirming the former. By it the title of the city, and her alienees become perfect, and no patent can ever disturb or strengthen it. And yet a patent will be of great value, as it will enable parties to maintain their titles in the tribunals of the country without other proof of the claim of the city and its confirmation, and it will also remove doubts as to the boundaries of the tract where their establishment rests in the uncertain recollections of witnesses as to places which are fast becoming obliterated by the improvements of a constantly increasing population. But it cannot by any possibility make a creek running into the bay a part of the bay itself, and it is not to be supposed that any suggestion of the kind will be heard with favor by those to whom the duty of issuing a patent is entrusted.

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Note.-- The decision in the above case was given orally, the presiding Justice stating at length his views, and observing that he would at a subsequent day file an opinion embodying their substance. A day was then fixed for counsel to prepare the findings, but soon afterwards the case was settled, and the suit dismissed by stipulation of parties.

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## R E P O R T .

of Senate Committee on Deed of State Tide Land Commissioners to Ellis.

Mr. President: Your special committee to investigate the matter

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of the sale of the tide or salt marsh lands of the State, respectfully report as follows:

Immediately after the appointment was made, we gave notice through our Chariman that we would, upon a day named, visit San Francisco, for the purpose of making the investigation and giving every one an opportunity to be heard before the committee.

The whole committee, in a very few days thereafter, repaired to San Francisco for the purpose of making as thorough an examination of the question before them as possible.

The public press of San Francisco had called attention to the whole matter before the appointment of the committee, and gave general notice to the public of the time and place of meetings of the committee, so that every one was afforded a fair opportunity to be heard, and a great many persons availed themselves of it. The committee used every endeavor to possess themselves of all information within their reach touching the matter. They devoted all the time to the subject that the pressure of their other duties would allow. They sat in San Francisco until all the testimony that could be reasonably produced was heard, after which they adjourned to meet at Sacramento, where they met from time to time, until they were satisfied they had taken all the testimony that could be of reasonable service in the premises, taking into consideration the time at their command. The committee, in the discharge of the duty imposed upon them, examined many maps, records, deeds and documents, took four volumes of oral testimony, amounting in the aggregate to six hundred and seventy-seven pages of written matter, and in addition thereto, they went upon the ground embraced in the Ellis deeds, in order to personally inspect and examine the condition thereof.

The late Board of Tide Land Commissioners were acting under the Act of the Legislature of the State of California, approved March thirtieth, eighteen hundred and seventy-four -- found in the statutes of eighteen hundred and seventy-three-four, page eight hundred and fifty-eight. That Act by its second section, gave to the State Board of Tide Land Commissioners, the power and duties of the old Board of Tide Land Commissioners. The fourth section gave the said Commissioners, or a majority of them, power to compromise with any adverse claimants to any portion or portions of tide lands under their control, whenever and on such terms as they may deem most conducive to the interests of the State. All such compromises to be by the advice of the Attorney-General of the State.

At the same session of the Legislature, and on the twenty-seventh of March, eighteen hundred and seventy-four, another Act was passed, granting the tide lands in Channel street and Mission Creek, between Ninth and Eighteenth street, to the City of San Francisco, and vacating said Channel street and Mission Creek as a highway between said points, and authorizing the city to divide the same into lots and blocks and sell it. (Statutes of 1873-4, pages 712 and 713; Sections 2 and 3 of said Act.)

The city authorities, under the last-named Act, did divide these lands into proper subdivisions, and laid down the proper streets through to them, in accordance with the plan of the city, in the vicinity of Channel street and Mission Creek. This Act, in the opinion of your committee, took all of the tide

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lands in Channel street and Mission Creek, between Ninth and Eighteenth streets, from the control of the State Board Board (sic) of Tide Land Commissioners (and from the control of the State), and vested the title thereto in the City and County of San Francisco, subject to the disposition by the Board of Supervisors of said city and county, as directed in said Act. "The State Board of Tide Land Commissioners", organized under the Act of March thirtieth, eighteen hundred and seventy-four, above referred to, and thereafter offered a considerable quantity of tide land for sale at public auction. These auction sales took place in November, eighteen hundred and seventy-five. We have given such auction sales quite a searching examination, and while your committee have found that quite a number of lots of land were knocked off at such sales to different men from those who received the deeds from the Board, we have been unable to discover any fraud. The practice seems to have been to give the final deed to the assignees of the original purchasers, in pursuance to a practice that had been indulged in by former Boards; and in several instances, lots purchased at the sale and not paid for on the day of sale, were on the next day put up and resold for a less price than first bid. The practice was loose and hardly in strict accordance with a wholesome rule of procedure.

By these sales, some twelve thousand nine hundred and seventy dollars and fifty-nine cents were realized, as shown by the supplemental report of the Commissioners, made on the sixth of December, eighteen hundred and seventy-five.

There were some other sales made to Messrs. Duane and Hearst, of lands about which there was a contest before the Board by several claimants, and the committee is inclined to the opinion that the award to Duane and Hearst was, under the circumstances, correct, at least we have been unable to discover any positive unfairness or oppression in the sales, although considerable testimony was taken in regard to them. It was soon developed in the examination that a considerable quantity of these tide lands of great value had been (by a kind of general residuary sale) conveyed to one George W. Ellis. As to this sale, a very large amount of testimony was taken, a considerable portion of which was conflicting and contradictory. The Ellis sale was the last one made by the Board, from which, according to the deeds, was realized the sum of five thousand seven hundred and forty-six dollars and ninety-six cents.

The lands embraced in the deeds are the whole of Old Channel street and Mission Creek between Ninth and Eighteenth streets, except such portions as were taken by the new streets and laid out by the city authorities, as above set forth, and except, also, a small portion of old Channel street, on Mission Creek, bounding on Mission blocks forty-two and one half, forty-five and forty-six.

These deeds also embraced some closed up streets in Mission Bay -- blocks one hundred and thirty-three, forty and forty-one, and also the greater portion of Mission block fifty-nine, a large portion of the west half of block sixty, and a large portion of the west half of block forty-nine together with some small portions of New Channel street. This sale was authorized (or rather made) by the Board at their last meeting in San Francisco, upon the records of the Board, at page two hundred and ninety-two. Under date of November twenty-fourth, eighteen hundred and seventy-five we find the following entry:

In the matter of the application of George W. Ellis; on motion, it was ordered that the engineer denominate all par-





cels of land included in the pre-emption claim of said Ellis and others, as per record in liber B of Miscellaneous Record, page six hundred and sixty-five, Recorder's Office, City of San Francisco, which have not heretofore been disposed of by the State of California through the Board of Tide Land Commissioners, and that the said Ellis be allowed the privilege of purchasing all the right, title, and interest of the State of California there-to, at the rate of four dollars per one thousand square feet.

From the evidence taken it appears that the above was not embraced in any formal motion made before the Board, but that it was written up from rough memoranda kept by the Clerk or Secretary, as expressing in a formal way the conclusion of the Board on the question.

It further appears, from the evidence, that Allardt, the engineer, was ordered to lay down on a map all the unsold lands, so that proper descriptions could be made of the lands ordered to be conveyed to Ellis.

Mr. Allardt says the instructions to make the map came from Secretary Russell.

Mr. Allardt further states that he was instructed by Commissioner Green to include the land in Mission Creek; that being in doubt, he went to Green for instruction. He also states that he produced the statute of March twenty-seventh, eighteen hundred and seventy-four, and informed Mr. Green of it, which Act conveyed Mission Creek to the city as before stated.

Mr. Green denied it, and Allardt was then uncertain whether Green got the information, but was certain he opened the book and showed the statute to Paul Neuman in Green's presence -- that Neuman read it, but he cannot say if Green heard it. We might say here, it appears strange that the Commissioners, and even the Attorney-General, were all ignorant of the Act, and yet this engineer and the Secretary Russell both knew of it, and the matter becomes a wonder when we take into consideration the fact that no offer, or attempt was ever made before the Ellis sale to sell the lands in Mission Creek, or any part of them. Acting under the instructions received by him, the engineer, Allardt, prepared and filed with the Board two maps, exhibiting the unsold portions of tide lands afterwards included in the Ellis deeds.

One was quite a large map, and was used before your committee, and marked "Exhibit A". This map included Mission Creek from Ninth to Eighteen streets, and also Mission blocks forty-nine, fifty-nine and sixty.

The other was a much smaller map, some two feet square, upon which was laid down three small pieces of land included in the Ellis deeds, being parts of closed streets in Mission Bay blocks forty, forty-one and one hundred and thirty-three.

Both these maps were returned to and filed with the Board before the Ellis deeds were drawn or signed, and the descriptions were made up from the data furnished by said maps. It will be observed that by the entry on the minutes of the Board, Mr. Ellis was to be allowed to purchase as much of the unsold tide lands as were embraced in the pre-emption claim of Ellis and others as per record in liber B. of Miscellaneous Record of San Francisco, at page six hundred and sixty-five. It was the united testimony of all the members of the Tide Land Board and of their Secretary and Clerk, that they did not pay any at-





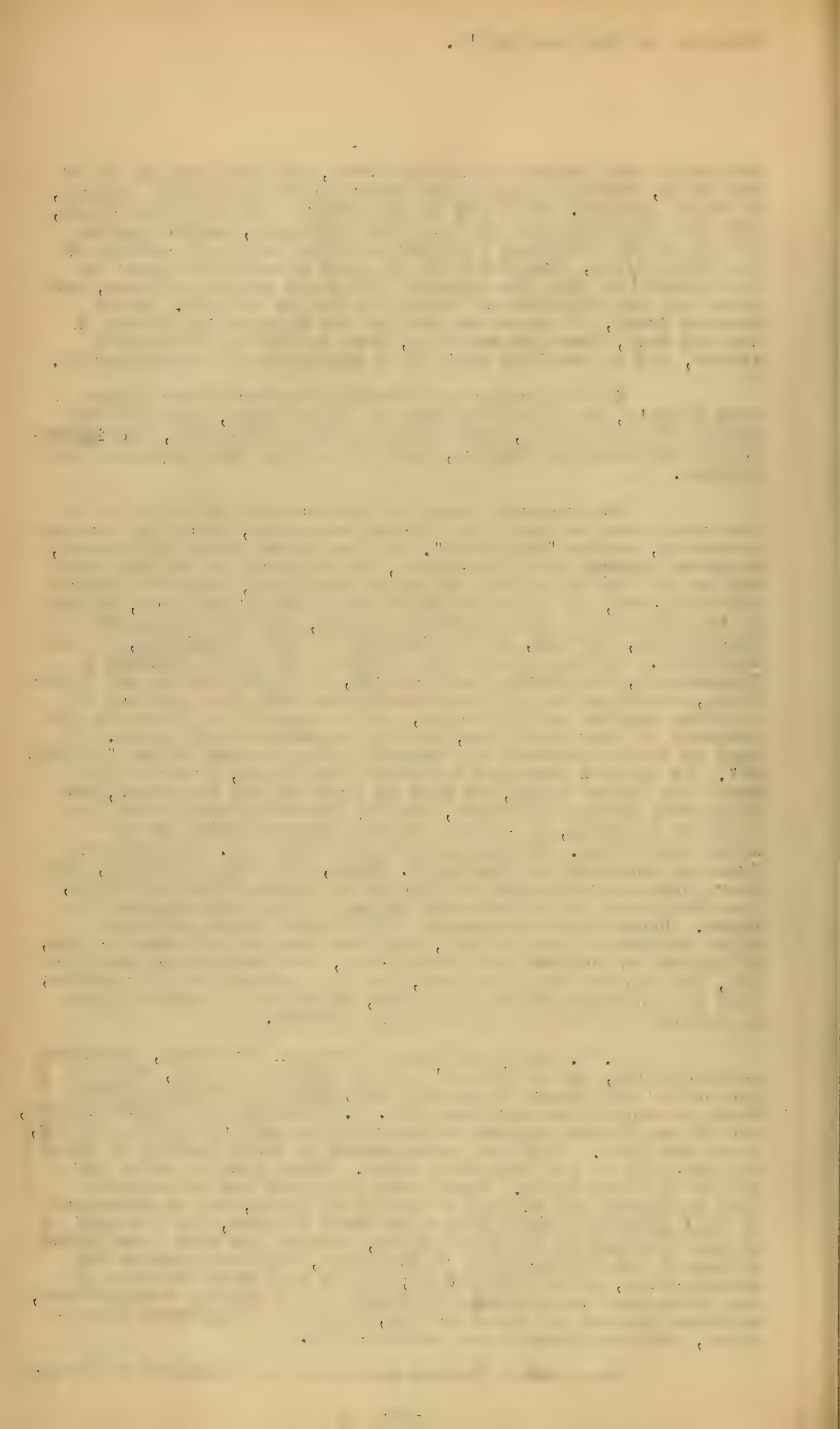
tention to the claim of Ellis whatever, did not consider it of any value, and that they could never ascertain what it covered, or where located. This led us to inquire into the Ellis claim, and upon this question we took much testimony, called people before us who have been familiar with the territory covered by the Ellis deeds, from which it was made clearly to appear to your committee that the claim of Ellis was a mere pretense, and never had any substantial foundation in law or fact. As to Mission Creek, it was shown that it was a navigable stream in law and fact, from its mouth up, even as high as Eighteenth street, and so remained until at a comparatively recent period.

It is further shown that there were older claims than Ellis's, conveying the whole of these lands, and that the owners of such claims, and those claiming under them, had improved and built up the country, while Ellis had done comparatively nothing.

We procured a copy of the document referred to in the resolution as the Ellis pre-emption claim, which is herewith presented, marked "Exhibit D". It was dated August eighteenth, eighteen hundred and fifty-three, and purports to be made under the Act of the Legislature of April twentieth, eighteen hundred and fifty-two, but is in distinct violation of this Act, is made in the names of three different persons, has no intelligent description, and was, in the judgment of your committee, utterly worthless. Another possessory claim in the names of Ellis & Kleenskroth, dated July twenty-first, eighteen hundred and fifty-three, which was in pretended compliance with the same Act of eighteen hundred and fifty-two, and is equally worthless in the judgment of your committee, for the reasons already given. A copy of this instrument is herewith presented and marked "Exhibit D2". It appears from the testimony that Ellis, prior to the Duane and Hearst deeds, as well as prior to his own award, had been often before the Board, but the Board had considered his claim of no value, as having neither legal validity or any local habitation. No one was able to locate it. It appeared from the testimony of Charles P. Duane, and from documents, that there was an arrangement entered into between Ellis and Duane, that Ellis was to withdraw his claims to the lands claimed by Duane. Under this arrangement Ellis made a deed to Duane dated September twenty-first, eighteen hundred and seventy-five, of blocks two hundred and seventy-one, two hundred and seventy-two, two hundred and forty-two, and two hundred and thirty-five; that in consideration of this deed, Duane was to assist Ellis in getting the balance of his claim through.

W. H. Patterson was the counsel for Duane, and Duane advised Ellis, as his (Ellis's) lawyer was an old man, that he had better get others to assist him; whereupon Duane advised Ellis to secure the services of W. H. Patterson and Creed Haymond, and it was finally agreed to secure their services in the matter, which was done. This was accomplished by Ellis deeding to Duane the one-half of his remaining claim. Duane paid no money for either of these deeds. Duane then completed his arrangement with Patterson and Haymond in behalf of Ellis, and in pursuance of that agreement Duane deeded to Creed Haymond, the one half of his interest in the Ellis claim, through the deed from Ellis to him of the twenty-first of September, eighteen hundred and seventy-five, above referred to; but in this deed the date of the Ellis deed was erroneously stated to be October twenty-first, eighteen hundred and seventy-five, instead of September twenty-first, eighteen hundred and seventy-five.

The deed to Haymond was dated the fifteenth of Novem-





ber, eighteen hundred and seventy-five. Duane conveyed to Patterson his other half of the Ellis claim about the same time, so that at the time of the award and deeds to Ellis he had but one-half interest in this claim, and Haymond and Patterson the other half.

There was evidence before the committee of several consultations between Duane, Haymond and Patterson as to the Ellis claim, but we could not find that either of these lawyers ever appeared before the Board to urge said claim, or did anything else in its behalf. What service they rendered for these deeds we have not ascertained.

From the testimony taken, it seems that the people affected by the Ellis deeds had no warning as to approaching danger, as none of the lands conveyed to Ellis had ever been offered for sale, or, if they had been offered, they had been withdrawn. True, some persons in block fifty-nine, out of excess of caution, had gone to the Board and obtained deeds of their lots for a small consideration. Some of the members of the Board claim that reasonable notice was given. We think not, so far as we could learn from patient inquiry, taking into consideration the lands affected by these deeds.

A specimen of the notice given has been furnished us. It is as follows:

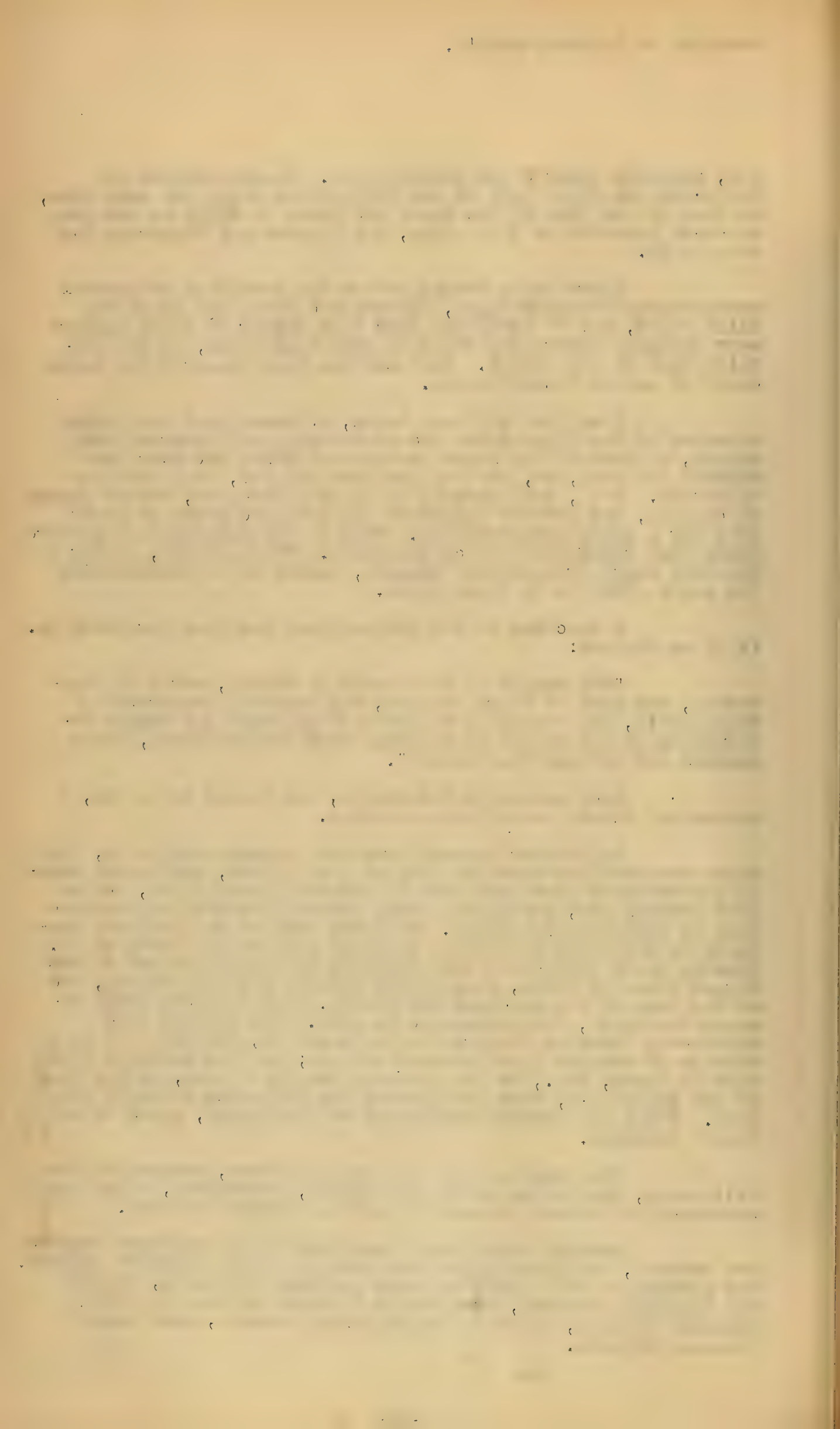
"The owners of lots south of Market, north of Nineteenth, and west of Third streets, who have not acquired the State title, are requested to bring their deeds and obtain information at the office of the Tide Land Commissioners, seven hundred and fifteen Clay street".

Such notice is indefinite, and signed by no one, a notice not likely to attract attention.

It further appears from the evidence before us, that Ellis has obtained deeds to land of great value, upon which costly improvements have been made by people in good faith, for a mere nominal sum; and that a great outrage has been perpetrated upon an unsuspecting people. We found much of the property conveyed by the Ellis deeds well improved and people living on it. Mission block fifty-nine was purchased by the Howard and Folsom Street Property Union, in eighteen hundred and sixty-eight, and at the time of the purchase had Messrs. Bond and McCullough examine the title, who pronounced it good. The company paid eighty-one thousand dollars for the property; filled it in at an expense of seventy five thousand dollars; and had expended other sums in taxes, etc., so the property had cost them, at the time of the Ellis sale, some one hundred and fifty-six thousand dollars. There are several residences on this block, owned by different citizens.

The value of the lots in this block, covered by the Ellis deed, was estimated by good judges, under oath, to be from seventy-five thousand dollars to eighty thousand dollars.

Mission Block sixty was fenced in in eighteen hundred and seventy, had been filled at a cost of thirty thousand dollars. The portion of this block conveyed to Ellis was worth, without the buildings thereon, from twelve thousand dollars to twenty thousand dollars, and with the buildings thereon, some eighty thousand dollars.





Mission block forty-nine has been filled in for about ten years,, at a cost of eight thousand dollars to ten thousand dollars. The portion conveyed to Ellis is worth about twenty thousand dollars, and belongs to the German Savings Bank. It will thus be seen, leaving out of the estimate the value of old Channel street and Mission Creek, and the three small pieces of land, being parts of closed streets, Ellis was making quite a nice speculation in well improved property ready for private use or rent.

The committee examined, under oath, every member of the Tide Land Board, and they, one and all, seemed to be astonished to find out what they themselves had done. Ex-Governor Pacheco stated that he was surprised when he learned from the papers the extent of the grant made to Ellis; that he did not know a foot of the land; said that after the auction sales he asked if there was any land left, and the Secretary informed him that there were a few triangular pieces; that it was proposed to convey these small pieces to Ellis -- pay him off with a shilling -- which was agreed to; that a few days before he went out of office, being in the Governor's in Sacramento, the other Commissioners came in with Ellis and the Secretary, having some fifteen or twenty deeds, and he was requested to sign them; that he said "Gentlemen, I suppose these are all right?" that he was assured they were, and signed them without reading them or knowing their contents; that he supposed they were conveying to Ellis only some small triangular pieces, and that he never knew of the existence of the Act making the grant of Mission Creek to the city. Says the deeds were presented to him for signature by the Secretary, Mr. Green, and Mr. Gardner.

Ex-Controller Green states that he never saw the map "Exhibit A", until after the papers began to attack the Ellis sale; that he never knew what the Ellis claim contained, that he tried to have the Attorney-General advise the Board, but could scarcely ever find him; and at last succeeded in getting him to write a short direction, which was copied in the minutes of the Board, at page two hundred and eighty-nine, which is as follows:

San Francisco, November 5th, 1875. I hereby advise the State Board of Tide Land Commissioners to dispose of all lands where there is no litigation, and where they can ascertain to whom the State title ought to go in pursuance of the tide Land Acts.

John L. Love, Attorney-General.

Green states that he knew nothing of the Act making the grant to the city; and that he signed the Ellis deeds, not knowing what they contained; never read them. Mr. Green further states that the only map before the Board about the Ellis sale, was the small map, showing the three small pieces of land conveyed to Ellis; that the Attorney-General showed an unwillingness to attend the Board; said it was none of his business. He further stated that when the sale was made to Ellis, he had no idea they were conveying to him what it has since transpired they did convey by those deeds.

Ex-Attorney-General Love testified that he never knew of the Act making the grant to the city of Mission Creek; that he considered Ellis' claim the merest nonsense, and refused to sign those deeds and many others.

...the city of Boston, and the surrounding country, was a very fertile and productive one. The soil was rich and the climate was temperate. The people were industrious and the commerce was flourishing. The city was the center of the colony, and the seat of government. The harbor was the most important one in the New England, and the city was the most important one in the colony. The people were very proud of their city, and they were very fond of their harbor. The city was the most beautiful one in the colony, and the harbor was the most important one in the New England. The people were very proud of their city, and they were very fond of their harbor. The city was the most beautiful one in the colony, and the harbor was the most important one in the New England.



Ex-Surveyor-General Gardner swears that he never saw the map "Exhibit A", until after the Ellis sales were denounced in the papers; that the only map he saw was a small one, which he requested Mr. Russell to bring to Sacramento with the deeds, but it was not done, and he signed the deeds without reading them or knowing their contents; and had he known their contents he would not have signed them; that he was deceived, but by whom he does not know; that he knew nothing of the Act making the grant to the city; that he had no idea they were conveying to Ellis any part of Mission Creek, nor anything else, save two or three small triangular pieces of land, represented on the small map. He further stated that he never told Governor Pacheco that the deeds were all right.

The Ellis deeds (copies of them) are herewith presented; one contains thirteen pages and the other fourteen. And your committee think it a little strange that these Commissioners should sign deeds as voluminous as these were without reading them, when they all seemed to be sure that the award to Ellis, was of two or three small triangular pieces of land. Prudent men, it does seem to us, would feel curious to know, how it could take two voluminous deeds to convey three small pieces of land.

It further appears to the committee that all these officers were grossly negligent in this matter, and took no care to see what they were doing.

In conclusion, your committee submit the following:

First -- That the Ellis deeds convey no title to any part of Mission Creek or old Channel street, for the reason that by a legislative grant the title to the same was conveyed to the City and County of San Francisco prior to the organization of the Board, and it was not in the power of the Tide Land Board to convey it to Ellis.

Second -- That the deeds to blocks forty-nine, fifty-nine and sixty conveyed no title, as said lands were neither tide lands nor salt marsh lands, and not in the power of the Board to convey.

Third -- That the testimony taken, together with the deeds, should be turned over to the Attorney-General of the State, and that he be directed to take such action in the premises as he may be advised is proper to remove the cloud of the Ellis deeds from Mission Creek, and also from Mission blocks forty-nine, fifty-nine and sixty; and in furtherance of that idea, we herewith present a resolution. All of which is most respectfully submitted.

McCappin, Chairman,  
Laine,  
Lindsey,  
Evans,  
O'Connor.

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Note.-- This document is now appended to the brief for the first time, but is on file with the papers in the Interior Department.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the science and art of medicine, and the health of the people of the United States. It was organized in 1847, and has since that time been engaged in a constant effort to advance the interests of the medical profession and the public health. The Association is composed of more than 50,000 members, who are organized into local, state, and national societies. The Association's work is carried on through its various departments, which include the publication of the Journal, the holding of annual conventions, and the carrying on of various other projects of interest to the medical profession and the public.

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DEED OF TRIPP TO UNITED LAND ASSOCIATION.

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Clinton C. Tripp, to the United Land Association:

This indenture made the twenty-second day of May, in the year of our Lord, one thousand eight hundred and seventy-eight, between Clinton C. Tripp of the City of Chicago, County of Cook, State of Illinois, party of the first part, and The United Land Association of the City and County of San Francisco, State of California, a corporation duly organized and existing under and by virtue of the laws of said State, the party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of five dollars, gold coin of the United States of America, to him in hand paid by the said party of the second part; the receipt whereof is hereby acknowledged, doth by these presents, grant, bargain, sell and convey unto the said party of the second part, and to their heirs and assigns forever, all that certain lot, piece or parcel of land, situate, lying and being in the City and County of San Francisco, State of California, and more particularly bounded and described as follows, to wit:

One undivided fifteen-sixteenths (15/16) of that piece or parcel of land, known as the "Ellis Claim", and described in a so-called pre-emption claim or pre-emption notice, a record whereof is contained in the Office of the Recorder of the City and County of San Francisco, in Liber "B", of Miscellaneous Records, page 655, and also all the undivided fifteen-sixteenths (15/16) of all that land described in two certain deeds made by the State Board of Tide Land Commissioners of the State of California, to George W. Ellis, and bearing date, November 24th, 1875, and recorded in the Office of the County Recorder of the City and County of San Francisco, in Liber 816, of Deeds, pages 7 to 22, inclusive. (The above notice and deeds being made a part of this deed.)

Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging, or in any wise appertaining, and the reversion, remainder and remainders, rents, issues and profits thereof: To have and to hold all, and singular, the said premises, together with the appurtenances unto the said party of the second part, their heirs and assigns forever. In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

(SEAL)

Clinton C. Tripp.

Signed, sealed and delivered in the presence of A. C. Hammond.

State of California,     )  
City and County of     )SS.  
San Francisco.         )

On the twenty-third day of May, A. D. one thousand eight hundred and seventy-eight, before me, Louis Franconi, a Notary Public, in and for said City and County, residing therein, duly commissioned and sworn, personally appeared Clinton C. Tripp, known to me to be the person whose name is subscribed to the an-

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nexed Instrument, and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, the day and year last above written.

(SEAL)

Louis Franconi

Notary Public.

A true copy of Original, recorded at request of L. A. Booth, May 24th, A. D. 1878, at 10 minutes past 3 P. M.

Stuart M. Taylor,

County Recorder.

State of California, )  
City and County of )SS.  
San Francisco. )

I, W. K. Dietrich, County Recorder, do hereby certify that the annexed is a whole, true and correct copy of an original record, as will appear by reference to Book 914 of Deeds, page 91, now in my office, and the said copy has been compared with the original, and is a correct transcript therefrom.

Witness my hand and Official Seal, this 22d day of March, A. D. 1880.

W. K. Dietrich.

County Recorder.

Per W. P. Merriam, Deputy.

Endorsed: Certified copy of deed C. C. Tripp to United Land Association.

-----  
Note.-- This document is now appended to the brief for the first time, but a certified copy of it is on file with the papers in the Interior Department.  
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#### ARTICLES OF INCORPORATION OF THE UNITED LAND

#### ASSOCIATION.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, who are citizens of the State of California, do hereby voluntarily associate ourselves together to form a private corporation under the laws of said State, and do hereby certify:

First. -- That the name of said Corporation shall be the United Land Association.











State of California, )  
City and County of )SS.  
San Francisco. )

On the ninth day of May, A. D. one thousand eight hundred and seventy-eight, before me, Louis Franconi, a Notary Public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared L. A. Booth, Geo. A. Miller, J. G. James, J. M. Litchfield, J. G. Riley, known to me to be the persons whose names are subscribed to the annexed instrument, and they severally acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, the day and year last above written.

(Seal.)

Louis Franconi, Notary Public.

Office of the County Clerk. )

)SS.

City and County of San Francisco. )

I, William A. Stuart, County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full, true and correct copy of the Original Articles of of (sic) Incorporation of the United Land Association, filed in my office, on the 9th day of May, A. D. 1878.

Witness my hand and the seal of said Court, this 22nd day of March, A. D. 1880.

William A. Stuart, Clerk.

By Jno. H. Mott, Deputy Clerk.

Dated May 9th, 1879. (sic)

(Endorsed:) Filed in the office of the County Clerk, of the City and County of San Francisco, this 9th day of May, 1878.

Thos. H. Reynolds, Clerk.

By Jno. F. Farren, Deputy Clerk.

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Note.-- This document is now appended to the brief for the first time, but a certified copy of it is on file with the papers of the Interior Department.





BEFORE THE COMMISSIONER OF THE GENERAL LAND OFFICE.  
REMARKS IN OPPOSITION TO A CHANGE OF THE SURVEY OF THE  
PUEBLO OF SAN FRANCISCO.

— BY —

PHILIP G. GALPIN.

ATTORNEY FOR CERTAIN GRANTEES FROM STATE.

January 7, 1878.

(8.10 pp. 7.)

Before the Commissioner of the General Land Office.

In the Matter of the Survey of the Pueblo Lands of the City of San Francisco.

Remarks in Opposition to a Re-Survey.

The Pueblo of San Francisco, is located on a peninsula washed, on the western, northern and eastern sides by the navigable waters of the ocean, or of the Bay of San Francisco.

Between these waters and the line of ordinary high tide, stretches a strip of land belonging to the state by virtue of her sovereignty.

Pollard, Lessee vs. Hagan 3 How. 212.

Teschemaker vs. Thompson 18 Cal. 22.

From the line of ordinary high tide to the center of the peninsula, the land is confirmed to the pueblo by a decree of the United States Circuit Court, in the case of the City of San Francisco vs. the United States, entered May 18, 1865.

The same land is relinquished by the United States to the City of San Francisco by Act of Congress approved March 8, 1866.

Thus it is apparent, that along the western, northern and eastern lines of the city, the United States has no lands to be segregated from those of the city by any boundary line she may there run.

The state, by virtue of her sovereignty, owns up to high water mark. The city, by virtue of the decree to which the United States is a party, and the Act of March 8, 1866, owns down to high water mark.

The proposition, approved by Mr. Sherman Day, (referred to on page 6 of the brief filed herein by Mr. Henry Beard), and in a more cautious manner, pressed by Mr. Dwinelle, at page 2 of his brief, appears to be, to change the survey so as to include some of the lands below high water mark, or as Mr. Dwinelle phrases it, "to take in certain lands excluded from this survey by reason of their Quality."

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This contemplated departure from the line of high water in July, 1846, is open to two objections.

1st. It is in direct disobedience of the decree which orders the surveyor to follow the line of ordinary high tide.

2nd. Such disobedience would be futile to enlarge the boundaries of the pueblo, for the land below high water mark, as we have seen, would not be taken from the territory of the United States, but of the State. She and her grantees are not parties to this record, and the surveyor is powerless to shave anything off from the domain of the State, or add it to that of the City.

So far as the boundary lines of the City upon the west, north and east are concerned, it matters not where the surveyor may run his lines. The State untrammelled by his decision will hold her domain to the high water line, established and agreed upon by herself and the city, and the city will sweep down on the other side to meet the State.

But while it is true that the lines here cannot bind as a boundary line for want of jurisdiction over the State, it is also true that the surveyor must run the lines of ordinary high water on the west, north and east, because he must compute this area to know where to run across the peninsula that east and west line which shall form the southern boundary of the pueblo at such a point as to include four square leagues above ordinary high water mark.

The western, northern and eastern (sic) lines then, when run are of no avail to limit at those points the rights of the State, or to enlarge at those points the domain of the city.

It is proper to make those points sedulously follow the line of ordinary high water in July 1846, as agreed upon between the State and the City, because if they be run too low -- if they be made to include tide lands now as between the City and the State belonging to the State -- to so run the lines will not take away the title of the State (not a party to this proceeding and give it to the city), but a greater area being included at the northern and eastern part of the peninsula, the four square leagues will not reach so far south; consequently the east and west line which forms the southern boundary will be shifted north, and property holders, deriving title from the city along her southern border, will be left uncovered.

In other words, while the surveyor cannot widen the pueblo lands from east to west, because he cannot take from the state to give to the city, if he attempts to do so, he of necessity brings the area of his four leagues further north, and thereby curtails the domain of the city upon her southern border.

The interests of the City and the State alike require that the surveyor follow the line of ordinary high water as agreed upon between the city and the State. (For further argument on this head, see page 11 of Mr. Beard's brief.)

It cannot be claimed that the State would be bound by any survey run below high water mark in any event, for such a survey is not authorized by the decree.

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## II.

The second point made by the Counsel for the City





is divisible into two heads:

1st. The surveyor was directed "in the English language to measure four square leagues, and English leagues were meant."

The right confirmed to the pueblo was an inchoate right acquired prior to the conquest and protected by the Treaty of Guadalupe Hidalgo. This inchoate right of the pueblo was one given by Mexican law for a certain quantity of land by Spanish measure; this inchoate right accrued before the conquest, and was clearly a right to Spanish leagues. The land confirmed is no more in quantity than the original claim; and surely the original claim under Spanish law was not for English leagues.

It would seem to result that as the original claim (which is confirmed), was made for Spanish leagues, the confirmed claim is also for Spanish (sic) leagues, and that the conquest and the use by the conquerors of the English language did not operate to add about "one-twelfth" to the size of Spanish grants.

2nd. The second head of this point consists chiefly of an elaborate citation of authorities to show that the decree of confirmation was wrong.

That the decree should not have "embraced so much of the upper portion of the peninsula above ordinary high water mark, as the same existed at the date of the conquest, to wit: the seventh day of July, A. D. 1846, on which the City of San Francisco is situated, as will contain an area of four square leagues, bounded on the north and east by the Bay of San Francisco, on the west by the Pacific Ocean, and on the south by a due east and west line, drawn so as to include the area aforesaid, subject to certain deductions, all of which excepted parcels of land are included within the area of four square leagues above mentioned, but are excluded from confirmation to the city," but the decree should have read "and you are also to exclude from measurement all land not available for cultivation, pasturage or forestage," and the Court having failed to incorporate these further exceptions into the decree, Counsel proposes that the surveyor sit as a revisory tribunal, to add these exceptions now.

Whatever might be the duties of a Spanish Court in directing the form of decree; whatever might be the duty of the Circuit Judge, the application to correct the decree is addressed to the wrong forum. Furthermore, the duties of the Surveyor of the United States in making surveys under decrees of the Court of the United States, are regulated by the Acts of Congress and the decisions of the Supreme Court, and the instructions of the General Land Office, and these will probably be found much safer rules of procedure than the modes pointed out by Spanish law to the swarthy Hidalgos who stretched over the ground their raw-hide ropes in the good old days when Spanish law was dominant.

Entertaining as are these old-time regulations, they are superseded by the new dispensation, whose sole maxim for the surveyor is, "your boundaries must conform to the decree."

Whatever the high office and duties of his Spanish prototype, the modern American surveyor is to make no estimate of the vegetable producing capacity of the soil, he is not to

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calculate the chances for wild oats, nor investigate the density of the thickets of scrub oaks. He is oblivious to "cultivable lands, pasturage and forestage" for the law has given him no power to act as a court in determining what to include and what to exclude.

The decree is his chart and his survey must follow the boundaries it prescribes.

Aside from the question of power in the surveyor to reform the decree by excluding from the four leagues land which he does not consider fit for cultivation, pasturage or forestage, it is by no means clear that the changed conditions of life since the conquest, does not warrant a change in the law to meet modern requirements; and the Circuit Judge may have considered that a city lot valuable for residence or business ought to be protected by the claim of the city and the owner's title made secure through her, even if the soil was so sandy that it would neither produce a cabbage, pasture a cow, or raise a hoopole.

If the court held to such an opinion, and so thinking, included within the pueblo land the city lots beyond the sand belt, is it not stretching somewhat the duties of the surveyor to permit him to revise the decree, by excepting from the survey such lands as he may think suitable neither for cultivation, pasturage or tree production.

### III.

The only question left is, whether the present survey is on the line of ordinary high water in July 1846.

This is a question of fact which cannot be resolved by personal inspection now.

In 1846 the tide crossed Montgomery street near Jackson; today the cityfront lies several blocks to the eastward. The debris from the mines pouring down the river, the filth from a large city coming through the sewers, together with the wash from thousands of acres of lands now cultivated, have united to shoal the waters of the bay in some places ten to fifteen feet, and to build up a widening strip of land along the shores. Miles of streets have been cut through sand hills, and acres of sand throw (sic) into the bay. Blocks beyond blocks have been filled in and built over.

To-day, to run the line of ordinary high tide, as it was in July 1846, would be impossible, without resort to old maps and parol proof.

Then, we have a contest of interested parties, struggling to push the line in here, and out there, to suit their own private ends.

Is such evidence more reliable than the official maps of the city made many years ago, before so many changes had taken place, and when there was no object to falsify the record -- maps accepted by the city and the state, the only co-terminous proprietors, as being correct. Again this line has long since been settled as between the city and the state. Each party has sold up to this line. Great rights of property have grown up under and beside it.

Why should the United States, having no interest

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Remarks in opposition to a change  
of survey by Philip Galpin, cont'd.

whatever along this accepted line, undertake now to establish a new demarcation.

The community requires no change. Who is asking to have the survey shifted? Mr. Dwinelle says it is the city; that the opposition of the State officials is not genuine; that it comes on motion of the Speculators, and the speculators have bought the spurious title of the city State.

Why the purchaser from the State is more a speculator than the purchaser from the city, or why one title is more spurious than the other, might be interesting questions.

Abuse of one's apponeut (sic) is not argument, and when employed by counsel of such ability, raises a suspicion that he feels the weakness of his cause.

It is usually the case that those who undertake to overthrow long settled and accepted facts, are those who hope to profit by the change.

The city can hope to profit nothing. The lots around the Park which her citizens would lose are probably worth as much, being nearer the business center as an equal area next the borders of San Mateo County.

May there not be other speculators along the southern boundary who hope to win, when lines are shifted, lands which now are quite beyond their reach? And may not these men, although unknown to counsel for the city, be those who deftly use the city's name to rake their chestnuts from the fire?

Philip G. Galpin  
Of Counsel for Grantees from the State.

San Francisco, Jan. 7, 1878.





U. S. LAND DEPARTMENT.

-oOo-

IN RE SURVEY OF PUEBLO LANDS OF SAN FRANCISCO.

-oOo-

BRIEF AGAINST ADOPTION OF WHEELER SURVEY.

EUG. B. DRAKE,

ATTORNEY FOR GEORGE HEARST, ET ALS., OWNERS OF PUEBLO LANDS,

CLAIMING UNDER CITY OF SAN FRANCISCO.

April, 1879.

(pp. 8, 8.10)

-oOo-

U. S. Land Department.

In re Survey of Pueblo Lands of San Francisco.

Brief against Adoption of Wheeler Survey:

I.

In a former argument filed by Mr. Greathouse and myself, we endeavored to show that the action of the Military Department in taking over 1,300 acres of the Pueblo lands of San Francisco without right or authority of law ought not to be sanctioned by the civil powers of the Government. But however that may be, I hope now to demonstrate that the Reservation should not be enlarged as proposed by the Wheeler survey, so called.

II.

The affidavit of Mr. Stratton, hereto annexed, shows conclusively that his survey of the Pueblo of San Francisco was made in strict conformity with the proclamations of President Fillmore and the diagram of General Totten; that the officers in charge of the Presidio were perfectly satisfied therewith, consented thereto, and assisted in running the line thereof.

Not only this, but the military authorities have quietly coincided with the Stratton Survey for more than twelve years, never having introduced the Wheeler Survey in evidence, nor have they ever claimed any standing or validity for it until quite recently. We submit that it is too late now to raise the question of that survey, after the City of San Francisco has been allowed to plat out and sell the disputed territory to purchasers in good faith, for a valuable and sufficient consideration.

III.

The affidavit of Milo Hoadley, hereto annexed, one of the persons who pointed out to Lieutenant Wheeler the southeastern corner of the reservation, as adopted, arbitrarily, by him, shows that the claim of the Military Department to this ad-

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ditional tract was wholly founded upon the forged and fraudulent grant to Benito Diaz, and is not, and never was claimed under the President's proclamations.

We submit that the Government ought not to claim under a grant which its own officers have long since rejected as fraudulent and void.

IV.

The affidavit of Mr. Welsh shows that the tract claimed for military purposes is altogether too large, and that most of it has always been used as a cow pasture, to the benefit, financially, of the officers in charge.

V.

The Stratton Survey was made under and by authority of the Act of Congress, providing for the settlement of Spanish titles in California. It was fairly and legally made after notice to all parties interested, and clearly gives the Military Department all the land it ought to have, and more too.

VI.

The Wheeler Survey was made ex parte and wholly without authority of law; and is made to follow the boundaries of the Bethuel Phelps deed around land which he never owned, and could not convey.

VII.

Finally and conclusively, we say that the Wheeler Survey has never been offered or put in evidence in the case. The City of San Francisco has never had an opportunity to meet and refute it, and it will be subversive of the rules of evidence to now allow it to be considered as evidence in the case without allowing the parties claiming adversely to it an opportunity of being heard against, and impeaching it.

Respectfully submitted.

Eug. B. Drake,  
Attorney for George Hearst et als., owners  
of Pueblo lands, claiming under City of  
San Francisco.

U. S. LAND DEPARTMENT.

In re Survey of Pueblo  
Lands of San Francisco.

State of California )  
City and County of )SS.  
San Francisco. )

The undersigned being sworn says: My name is James T. Stratton, my age is 48 years, I reside in Alameda County, California, and I am a Civil Engineer by occupation and profession.

I was Deputy U. S. Surveyor under L. Upson, Esq., U. S. Surveyor-General for California, during the year 1866, and as





Brief against adoption  
of Wheeler Survey, cont'd.

such deputy made a survey of the Pueblo lands of the City and County of San Francisco, in the months of March and April of that year. Before commencing the survey I called at the quarters of the then Commanding General, General Mc. Dowell, but not finding him, I left my name, official position, and mission at his then headquarters.

Subsequently, on the same day, as requested by Col. Drum, I reported myself to Major Bowman, the Commanding officer at Point San Jose, in the City and County, and consulted with him, fully and at large, upon the subject of establishing and running the southern boundary line of the Presidio Military Reservation.

I had with me certified and authentic copies of the proclamations of President Fillmore, establishing the reservation, and General Totten's diagram accompanying the same, and I ran the southern line of the reservation in strict accordance therewith, and so informed Major Bowman and Major Allen, who were then in command, and were representing the Military Department in the matter of the survey.

They both fully understood the reason why the southern line of the Presidio was so located; they detailed a squad of men to assist in surveying the line, and concurred in, and consented to, the line thus ran by me.

I was instructed to be governed, and I was governed strictly by the said proclamations and diagram in making the survey, and there was no difficulty in tracing upon the ground the lines thereby called for.

At the time of making such survey I had no knowledge, and was not informed of the deed of the Benito Diaz title, to the United States, by Bethel (sic) Phelps, or that any different or other lines were claimed by the military authorities, than those represented on the Totten diagram.

The survey so made by me, is represented on the plat on file in the office of the Commissioner of the General Land Office.

Subscribed and sworn to before me, April, 1879.

U. S. LAND DEPARTMENT.

In re Survey of Pueblo  
Lands of San Francisco.

State of California, )  
City and County of ) SS.  
San Francisco. )

The undersigned, being sworn, says: My name is Milo Hoadley, my age is 60 years and upwards. I am a civil engineer by profession and occupation; I have resided continuously in the City of San Francisco for more than twenty-five years last past; I have made surveys during the past twenty-five years of lands, streets, blocks, and lots in every part of the city. I am familiar with the boundary of the Pueblo lands, and also with the tract of land commonly called Presidio Military Reservation. I am the person who, with General Keyes, pointed out to Lieut. Wheeler in 1868, the so-called southeastern corner of the Presidio tract at the time he commenced the "Wheeler Survey."





This corner was the summit of a hill lying south-easterly of the Barracks, and was adopted under a deed of conveyance, of a portion of the Benito Diaz grant, from Bethuel (sic) Phelps to the United States Government, made in or about the year 1850. This deed is probably on file among the archives of the War Department, and at the time of its execution and delivery was supposed to have conveyed a good title to the land, but the Benito Diaz grant has since been adjudged by the Courts to be fraudulent and void, and was finally rejected.

Subscribed and sworn to before me, April 1879.

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U. S. LAND DEPARTMENT.

In re Survey of Pueblo  
Lands of San Francisco.

State of California,     )  
City and County of     )SS.  
San Francisco.           )

The undersigned being sworn says:-- My name is Edward J. Welch, my age is 52 years, I reside in the City of San Francisco, and am a broker by occupation. I know the tract of land called the Presidio Military Reservation at San Francisco, California.

The greater portion of said tract has been used for many years last past, and is now being used for grazing purposes by various dairymen paying to the person or persons in charge thereof, one dollar per head per month for the privilege of grazing their cows within the government inclosure.

On the 24th and 25th of March of this year, (1879), I counted 600 head of cattle (mainly milk cows), and about thirty head of horses running upon said tract.

I do not know whether the money paid by these dairymen for grazing their cows within the Reservation is ever paid over to the U. S. government or not.

And further deponent saith not.

Subscribed and sworn to before me, April A. D., 1879.

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RESOLUTION No. 11,498 N. S.

EMPLOYING JNO. W. DWINELLE AS SPECIAL  
COUNSEL IN PUEBLO LANDS MATTER.

( November 4, 1877. )

The members of the Board of Supervisors met yesterday afternoon, at the usual hour. With the exception of Mr. Roberts, all were present. The Mayor presided but shortly retired, when Mr. McDonald acted as Chairman.

----oOo----

Looking after the City Lands.

The following resolution, introduced by Mr. Wise, was unanimously adopted:

That his Honor, the Mayor, be and he is hereby authorized and empowered to employ the Hon. John W. Dwinelle to proceed to Washington, at a compensation of \$2,000 to represent and defend the interests and rights of the City and County of San Francisco, in the matter of the Pueblo lands, and to obtain a patent for said lands, and to do and perform all acts which may be necessary to ensure a final adjudication and determination of the whole matter; said compensation to be in full payment for all services rendered, and to include all expenses of whatever nature or kind which may be incurred in this proceeding.

(The Daily Examiner, Nov. 6, 1877, Vol. XXV., No. 109.)

(Cannot find official record of Resolution 11498. Nos. 11, 497)  
(and 11, 499 appear in several issues but 11498 does not appear)  
(to have been printed. C. )





RESOLUTION NO. 12,992.

(November 11, 1878 ).

"Whereas, It is the desire of this Board and the people of San Francisco that a patent should issue for the pueblo lands of the City at an early day, and whereas, the subject is not within the jurisdiction of this Board, and this Board is not competent to pass upon the question involved, not knowing where the lines should run in the survey, and this Board has full confidence in the integrity and ability of the Commissioner of the General Land Office, therefore resolved, that this Board will not entertain the further consideration of the subject, but the Commissioner of the General Land Office is hereby respectfully requested to decide the questions before him and cause a patent to issue at his earliest convenience and the clerk is hereby directed to advertise this resolution as required by law. In the Board of Supervisors, San Francisco, November 11th, 1878."

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".



U. S. COMMISSIONER J. A. WILLIAMSON'S DECISION.

PUEBLO LANDS OF SAN FRANCISCO.

Delivered Nov. 11, 1878.

San Francisco.

S. Farjeon, Book and Job Printer, 621 Sansome St.

1878.

(8.10 pp. 8.)

PRIVATE LAND CLAIMS.

PUEBLO LANDS OF SAN FRANCISCO.

The Stratton Survey following the high-water line of the Bay, as established by the City and County-Surveyor of San Francisco, in 1851, is correct. That if not strictly so, it has so long been acquiesced in by the city that it must be considered that the city has waived its protest or it is estopped by its acts from denying its correctness.

As the survey bounding the Presidio military reservation follows the conjectural map furnished by the military authorities upon which the reservation was made, and which has for years been considered correct and as parties have purchased upon that belief, the survey must be adhered to.

Equitable estoppel is held to apply as against both the protest of the city and the military commander.

Department of the Interior,  
General Land Office,  
Washington, D. C.,  
Nov. 11, 1878.

U. S. Surveyor General,  
San Francisco, Cal.

Sir: I have examined the official survey of the Pueblo lands, confirmed to the City of San Francisco by decree of the Circuit Court of the United States for the Northern District of California, on the 18th day of May, 1865, and the act of Congress entitled "An Act to quiet title to certain lands within the corporate limits of the City of San Francisco," approved March 8, 1866.

The survey was made upon the request of the city, and between the months of March, 1867, and January, 1868, by James T. Stratton, U. S. Deputy Surveyor, under the provisions of the act of Congress entitled "An Act to expedite the settlement of titles to lands in the State of California", approved July 1, 1864, which provides (Sec. 1), that at the expiration of the ninety days allowed for filing objections and proof, by any party interested, after due publication of notice of the survey and platting thereof, a copy of the plat and field notes, objections thereto, and proofs in support of or against the same shall

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY

OF THE UNITED STATES

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be forwarded to this office for approval or other action.

A copy of the survey and plat of said lands, together with divers objections thereto and proofs with your report thereon, have been received and duly considered.

By Sec. 7 of the Act of July 1, 1864, it is made the duty of the Surveyor General of California in making such survey, to follow the decree of confirmation as closely as practicable whenever such decree designates the specific boundaries of the claim, but when only the out-boundaries are designated within which the quantity confirmed is to be taken, the location shall be as nearly as practicable in one tract of compact form.

The decree of the Circuit Court in this case ratified by act of Congress, confirms to the city "a tract situated within the County of San Francisco, and embracing so much of the extreme upper portion of the peninsula above ordinary high water mark as the same existed at the date of the conquest of the country, viz.: July 7, 1846, on which the City of San Francisco is situated, as will contain four square leagues, said tract being bounded north and east by the Bay of San Francisco, on the west by the Pacific Ocean, and on the south by a due east and west line, drawn so as to include the area aforesaid, subject to the following deductions: Such parcels of land as have been heretofore reserved or dedicated to public uses by the United States, and also such parcels of land as have been by grants from lawful authority vested in private ownership and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder, by said tribunals in proceedings now pending therein for that purpose, all of which said excepted parcels are included within the area of four square leagues above mentioned, but are excluded from confirmation to the city.

"This confirmation is in trust for the benefit of the lot holders under grants from the Pueblo, town, or city of San Francisco, or other competent authority, and as to any residue in trust for the use and benefit of the inhabitants of the city."

In following the description aforesaid in said decree, the deputy surveyor has assumed to establish the line of ordinary high water mark as it existed July 7, 1846, along the bay and ocean on the north, east and west of said tract, and has established as its southern boundary a due east and west line, so as to include an area of four square leagues, such as are intended in Mexican grants, and comprising 17.755 77-100 acres.

The land supposed to be below the ordinary high water mark of 7th of July, 1846, and designated as salt marshes, are excluded from both the survey and measurement of area.

The survey locates and bounds divers parcels of land, which are supposed to be excepted from the lands confirmed to the city by the decree, but included in the measurement as part of the four leagues, viz.: 1st. The Presidio and Point San Jose military reservations, two lots in San Francisco, and divers parcels and tracts designated on the plat by numbers.

To this survey and the plat made therefrom, certain protests and objections were duly filed by the City of San Francisco which are substantially,

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry must be supported by proper documentation, such as receipts or invoices. This ensures transparency and allows for easy verification of the data.

In the second section, the author outlines the various methods used to collect and analyze the data. These include direct observation, interviews with key personnel, and the use of specialized software tools. Each method has its own strengths and limitations, and the author provides a detailed comparison to help the reader understand which approach might be most suitable for their specific needs.

The third part of the document focuses on the results of the study. It presents a series of charts and graphs that illustrate the trends and patterns observed in the data. These visual aids are accompanied by a thorough explanation of what they represent and how they relate to the overall findings of the research.

Finally, the document concludes with a summary of the key findings and a set of recommendations for future work. The author suggests that further research should be conducted to explore the underlying causes of the observed trends and to develop more effective strategies for addressing the issues identified.

The second part of the document provides a detailed description of the experimental setup and the procedures followed during the study. It includes information about the participants, the materials used, and the specific tasks that were performed. This section is intended to provide a clear and concise overview of the methodology, allowing the reader to understand the context and scope of the research.

The third part of the document presents the results of the study in a clear and organized manner. It includes a series of tables and graphs that show the data collected during the experiment. These results are then discussed in detail, with the author providing a thorough analysis of the findings and their implications for the field of study.

Finally, the document concludes with a summary of the key findings and a set of recommendations for future work. The author suggests that further research should be conducted to explore the underlying causes of the observed trends and to develop more effective strategies for addressing the issues identified.



1st. That the survey does not in fact follow the line of ordinary high-water mark as it existed on the 7th of July, 1846; that certain tracts along the bay inlets and creeks, and designated as salt marshes, are improperly excluded.

2nd. That in computing the four leagues there is error in not excluding from measurement certain sandy and rocky wastes, according to the alleged custom and law of Pueblo grants made under Spanish and Mexican rule.

3rd. That the reservation of the tract of about 5 86-100 acres near the Mission Dolores, and marked No. 11 on the plat in favor of C. S. Bernal et al., is erroneous.

4th. The further objection now is made that the four leagues confirmed to the city by the decree should be construed to mean leagues, each equal to three miles statutory or geographical. By the letter of the law, this last objection is not properly made at so late a day. The question, however, is put at rest by the uniform practice of this Department for many years.

The term league is not ordinarily employed in land measurement in England, or English colonies in America, but it is a term used chiefly for marine measurements.

Large acquisitions of territory have been made, however, where the term league is in common use as a unit of land measurement, and as such, has been adopted into American legislation and jurisprudence. Such adoption has not changed its import. The cases are numerous where the term league is used without qualification in the confirmation of land titles by Congress or the Courts, where the claims were under the Spanish or Mexican grants. The common understanding has been that confirmation in the words of the grant follows and adopts the same sense intended in the grant.

To confirm leagues under a Spanish or Mexican grant means to confirm Spanish or Mexican leagues.

For many years, and in a multitude of cases, surveys have been followed and patents have been issued without objection, excepting in one recent case, upon that understanding. The word league as applied to American land law, like the word arpen, has the same signification as in Spanish or Mexican law whence it is borrowed, so that it is not necessary, in a decree confirming title under such grants, to qualify the word.

This was the decision in the recent case of the Rancho de los Palos Colorados, made by this office April 10, 1878, where the question, raised for the first time, is discussed at great length. That decision was affirmed by the Secretary of the Interior, and the question is no longer an open one in this Department.

If under the Mexican grant, the city was entitled in computing the four leagues to exclude from the measurement any sandy or rocky wastes, such right should have been urged before the court and established by the decree. The right was urged or adjudged not to exist, as the decree does not make such exceptions from the measurement.

The surveyor cannot make exceptions not made by the decree.





The decree does except from confirmations to the city such parcels of land as have been by grants from lawful authority vested in private ownership, and have been or shall be confirmed by the tribunals of the United States.

Among such parcels confirmed by the District Court of the United States is that of the 5 86-100 acres near the Mission Dolores in favor of Bernal et al. The survey was confirmed by that Court. Such confirmation has not been reversed or set aside.

It is urged that Dehon, a grantee of the city, at the time intervened in the District Court to prevent the confirmation on grounds that were overruled, and that his appeal was dismissed because he had no title upon which to base his intervention (see 3d. Wallace, 774).

It is further urged that the city not having been a party to these proceedings, and now having its claim of Pueblo lands confirmed, it may properly object to the Bernal grant and survey, which is now done on various grounds. In this case, however, the surveyor is required by law to follow the decree, which excepts as we have seen, all tracts confirmed to private owners by the tribunals of the United States. The parcel in question, and its boundary, having been confirmed by such tribunal to a private person, it was properly excepted in this survey and plat. (Fossat case, 2d Wallace r., 649).

The protest against the exclusion from the survey of the several parcels designated as salt marshes, involves the decision as to the true line of ordinary high water at the date of the conquest, July, 1846.

The survey was made over twenty years after that date, during which time an obscure hamlet, containing a small Mexican population, has grown into a large American city and sea port of great commercial importance. The marshes and shallow waters had been filled, and the coast line advanced into the bay, where wharves and docks were constructed.

To ascertain under such circumstances where the shore line was in 1846 is a problem full of difficulty, and the exact truth is perhaps not attainable.

It appears, however, that there have existed under the laws of California, at least since April, 1850, county surveyors, whose duty it was to survey and designate the boundary lines of counties and cities, and designate their intersection and distance from coast lines or streams, and to preserve all surveys, field notes and plats thereof in their respective offices.

The decree of confirmation to the city of the Pueblo lands was not made until May 18, 1865. On the 11th of October, same year, the U. S. Surveyor-General for California notified the city and county surveyor that he was preparing to execute a survey under the decree, and asked for data and information with reference to the lines fronting on the water. In response to this request, the city and county surveyor supplied a certified copy of the field notes and records in his office of the line of segregation along the water front, according to an early survey as made by the city and county surveyor, and as returned to the surveyor of California, but says in his communication that he "has made no survey of the water line in the front of the city as shown by the water-lot act and map of 1851." This early survey





of the line of segregation and map of 1851, were intended to show the line of ordinary high water at the time of the conquest; and to indicate the tide-flowed lands.

When Deputy Surveyor Stratton commenced the survey, March 1, 1867, he reports that, on account of the natural and artificial changes that have been made in the water line of the city since its occupation by the Americans, he was compelled to rely entirely upon the first official map of the city made by Wm. M. Eddy, the first city and county surveyor, and certified as aforesaid and which he made the basis of this survey.

I think this early and only official survey was properly followed by the Deputy Surveyor. It was made by a sworn city and county official before great changes were made, and when the real truth was, no doubt, attainable, and no apparent reason existed for deviating from it.

The probabilities are that the early survey followed the exact line of high water more closely than customary as in similar surveys by United States surveyors. Instead of crossing the small and unimportant inlets and arms of the bay, as is more usual, so as to give a less tortuous line, he appears to have followed all their windings in the endeavor to literally establish the ordinary high-water line, and which, as intimated by Judge Field in the case of Tripp vs. Spring in the United States Circuit Court, to which our attention is called, makes a very singular boundary. He may have considered this to be his duty, however, in segregating the tide-flowed lands of the State. Such survey, however irregular it leaves the eastern and northern line, has been adopted and acted upon so long that a very strong case of error or injustice should now be required for its overthrow.

Six respectable witnesses concur in opinion that one of the marshes designated as below the ordinary high-water line in 1846, was partly a fresh water marsh, and that the other near the Mission Dolores was only occasionally overflowed by the tides. Three of these witnesses went to that State in 1849, or later, and none seem to testify except from such knowledge as citizens generally might have who were there in 1846 and who had no occasion to make a special survey, or to keep any data of the lines. No monuments were erected, no survey made, nor record kept by them. Such evidence should hardly be allowed to overthrow an official survey made so many years before under so favorable circumstances, and when nothing is shown to cast doubt upon the honesty and good faith of the surveyor, chosen by the people or authorities of the city and county now objecting. Any doubt that may exist as to the correctness of that survey seems to be solved, however, by the general acquiescence therein by the city and county, as well as by the State officials and public at large.

After the protest made in this case, the Surveyor-General of the State certified to the State board of tide land commissioners a map of the survey according to the same field notes and map furnished to Mr. Stratton, and thereupon, March 19th, 1869, that board, including the mayor of the city and county of San Francisco, the president of its chamber of commerce, certify that the map correctly exhibits the water line front of the city and county, together with the reservations as established and adopted by said board, under the act to survey and dispose of certain marsh and tide lands belonging to the State approved March 30th, 1868. If the so-called salt marshes were below the ordinary high-water line of 1846, then they were





the property of the State, without special act of or grant from Congress. Pollard vs. Hagan, 3d How. 212. McCready vs. Virginia, 94 U. S. R. 394.

Even when the sea or bay only is named as a boundary, it is held that the ordinary high-water line of the sea or bay and its arms is intended, so that salt marshes below that line are properly excluded from the survey as belonging to the State. U. S. vs. Pacheco, 2d Wallace 387.

The State claimed those salt marshes as lands below high water as shown by the early surveys and maps of the County Surveyor, and when the same survey was adopted and approved by the United States survey, and it appeared there was no objection to the line made by the United States, the State board assumed that the question was settled and caused the land to be plat-  
ted for the purpose of sale.

Afterwards, March 4, 1870, the city and county by its board of supervisors by its order No. 911, provided for its adoption of said map, its streets, alleys and reservations, and the State Board proceeded to offer for sale and sell the parcels, not reserved in pursuance of said legislative act. These sales were matter of public notoriety, and hundreds of people purchased of the State, without, so far as we are advised, any protest or warning on the part of the city of its claim to the land being sold. These numerous purchasers took possession of the lots so purchased, and many of them have erected houses, and made costly and valuable improvements thereon under the belief that the title of the State acquired by them was undisputed. Indeed the city in 1875, desiring to make an addition to one of the reservations made by the State went to the State board and purchased the land nearly 30,000 feet, the same as private individuals had done before. It also appears that in 1876, the city brought suit against Ellis and divers others to recover numerous parcels of these so called salt marshes.

The city alleged her ownership to have dated from the 27th March, 1874, and on the trial stipulated that the lands were portions of the said salt marshes, and owned by the State down to that date.

These acts occurred while the protest of the city was on file in this office, it is true, yet its consideration was not urged by the city, nor any action taken hostile to this claim made by the State under the county and United States survey, though the people continued their traffic in the State titles. I think the long acquiescence of the city in the survey, and both tacit and positive recognition of its correctness amount to a waiver of her protest filed in your office. Indeed, this seems to have been the opinion of the board of supervisors of the county respecting another part of the survey against which Ord filed a protest Nov. 5, 1868, because it gave the city too much and the military reservation too little.

In 1874, said board, by its resolution No. 4,860, asked Congress to confirm the survey at that point, because upon the faith of its correctness, the city had assumed to plat and sell the very ground which General Ord, in his protest, claimed to belong to the military reservation.

The protest, not being actively urged, was supposed to be abandoned, or, as stated in the resolution, "no objection was made to the said survey."





This argument is still stronger as against the objections now urged by the city and county to the survey of high water line.

It is a maxim of the law that one who does not assert his claim when he ought shall not be heard when he would. Under this maxim a man who purchases in good faith of a pretended owner, is protected against even the real owner who stood by and knew of the purchase but said nothing. Bigelow on Estop., 434 (2d Ed.), and cases cited. Lucas vs. Hart, 5th Iowa R., 415; Bronson vs. Chappel, 42 Wall R., 681. That cities and counties are bound by the same equitable rule of estoppel has been decided in numerous cases, especially illustrated where their bonds have been illegally sold with their knowledge and silence. Big. Estop. 423. The cases in which these equitable principles have been applied are so numerous and well known as not to require particular citation. The acts of the city or state will not estop or hinder the United States from making the proper survey and patent, but having made a survey according to the light of the best evidence at command, estoppel may properly be urged as against the protest and objections of private claimants.

The objections of the city to the survey of the high water line are, therefore, overruled.

It is claimed, but not very clearly shown, that the city has assumed ownership, and disposed of lands down to the south line of the Stratton survey. If this be true, it is of itself a virtual abandonment of the objections to the exclusion of the salt marsh from the survey, for except for such exclusion the south line must be located further north. The city cannot have the four leagues given by the survey and the salt marshes in addition.

There is also a protest by Gen'l. Ord in behalf of the United States against the survey in establishing the eastern and southern line of the Presidio military reservation.

When the survey was ordered, there was among the data sent from this office a certified copy of a map or sketch, which had been furnished by the War Department as a conjectural outline of the reservation as modified and reduced by the proclamation of President Fillmore of Dec. 31, 1851. The southeast corner of the reservation and the south side of a pond, are the only points designated in the description of the southern and eastern boundaries by the President. The south-eastern corner was the uncertain point.

In the conjectural sketch aforesaid or outline of the reservation laid before the President when its reduction was recommended and adopted, the south-east corner is found in a tangent drawn from the south side of the pond to a point eight hundred yards south of point San Jose, as established by the Stratton survey. This, if correct, left the south line established, but the east line undetermined. It appears, however, by affidavits that the board of officers making the recommendation for the reduction, planted a cannon at a point intended for the south-east corner of the reservation. This cannon, however, was soon removed by persons unknown and the corner left unmarked.

When Stratton made his survey he conferred with the local military authorities, and received their assistance in

...the city of Boston, and the surrounding country, from the first settlement of the Puritans in 1630, to the present time.

The first settlement of the Puritans in Boston was made in 1630, when a group of about 100 men, women, and children, led by John Winthrop, arrived in the city. They were seeking a place where they could practice their religion freely, and where they could live in a community governed by the principles of the Bible.

The Puritans were a group of English Protestants who believed in a strict interpretation of the Bible. They were opposed to the Catholic Church, and to the Anglican Church, which they considered to be too close to Catholicism. They believed that the only way to achieve salvation was by living a life of piety and obedience to the commandments of God.

The Puritans were a very hardworking and frugal people. They were not interested in luxury or in the accumulation of wealth. They believed that the only way to achieve success in this world was by working hard and being honest. They were also very religious, and they spent a great deal of time in prayer and in reading the Bible.

The Puritans were a very influential group in the history of the United States. They were the first to establish a system of government based on the principles of the Bible. They were also the first to establish a system of education based on the principles of the Bible. Their influence can be seen in many of the institutions of the United States today.

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establishing the lines of the reservation. Gen'l. McDowell was then in command, but it does not expressly appear whether he assented to the survey. His successor Genl. Ord, protests that the survey is erroneous, and that the true south-eastern corner is south and east of that established by Stratton, and proves that the cannon was planted where he claims the corner to be. It also appears that the city, assuming the survey to be correct, took possession up to Stratton's south line, platted the land as city property, and sold lots to divers people, who took possession of the same.

Other affidavits show that other portions of the disputed territory have been in the peaceable possession of other citizens for many years. There was nothing among the records or official papers to designate the southern boundary of the reservation down to the time of the Stratton survey save the conjectural map, used when the proclamation was issued, and that seems to leave only the eastern line in conjecture.

When the official survey adopted the same southern line, it only followed what the map supplied by military authority had long indicated as the true line, and what has since been adhered to by the city and its grantees.

Had the military authorities deemed it important to establish a line other than the one indicated in their conjectural plat, it would seem to have been their duty to have demanded its establishment beyond doubt, and not allow a false representation of it to be perpetuated. This argument does not apply with so much force against the objection to the eastern boundary as the plat aforesaid leaves it entirely conjectural. But that line has since been established by an act of Congress approved May 9, 1876, (Vol. 19, p. 52) along the west side of Lyon street, west of the Stratton line and still further reducing the reservation. I conclude the survey of the Presidio military reservation should not be disturbed or modified, except to conform with said act of Congress, which will not require a new survey.

No other objections or protest against the survey having been filed, the survey and plat are hereby approved.

You will notify all parties in interest of this decision, and allow them sixty days within which to appeal to the Hon. Secretary of the Interior, and at the expiration of said sixty days you will promptly report the proceedings had pursuant to said notice.

Very respectfully, (sic) your ob't  
servant,

J. A. Williamson,  
Commissioner.





RESOLUTION CONCERNING APPEAL FROM  
DECISION ON STRATTON SURVEY.

(December 23, 1878.)

There was a meeting held last night by the Board of Supervisors. All the members were present. The Mayor was absent and Mr. Gibbs officiated as Chairman.

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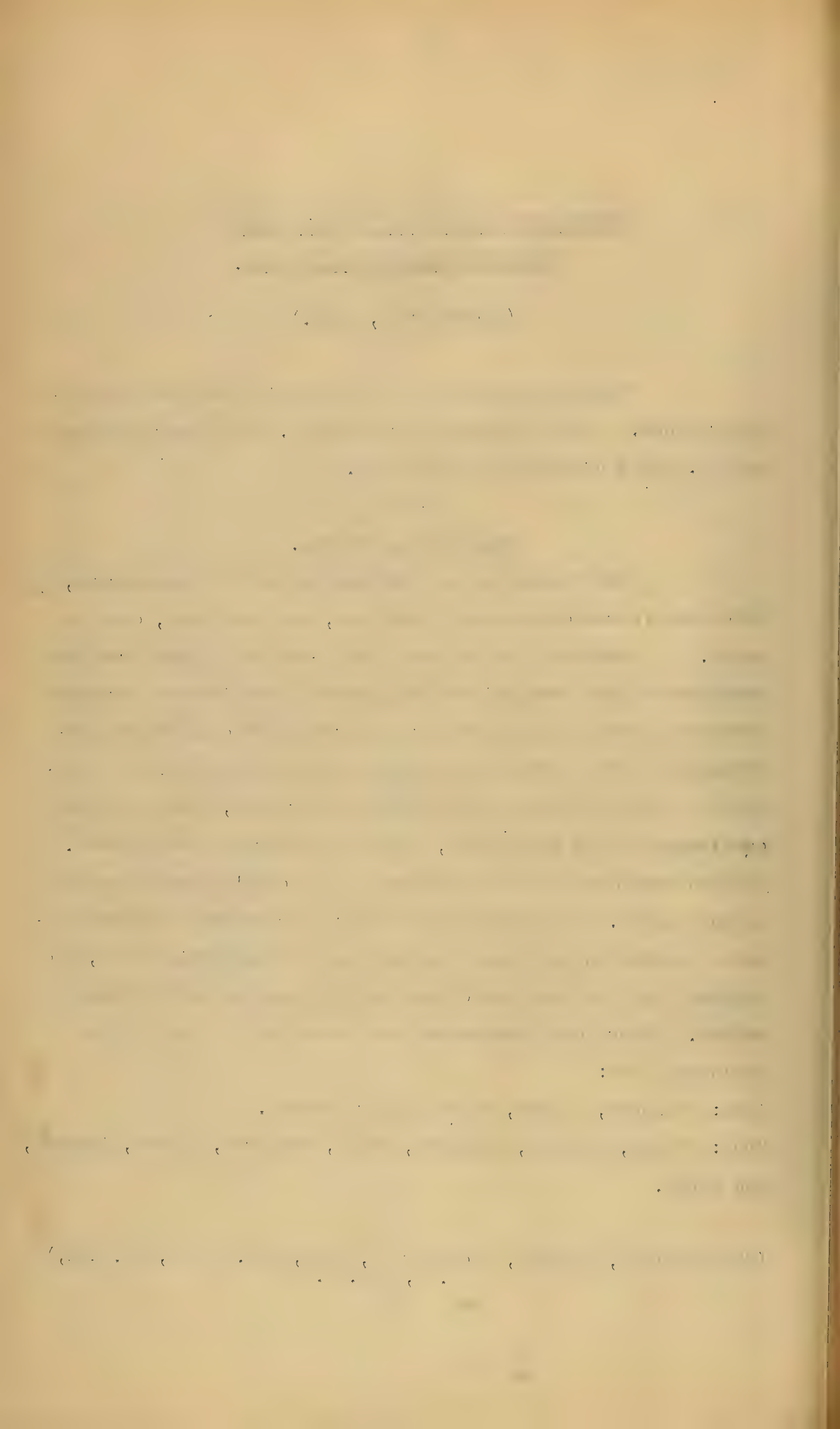
The Stratton Survey.

The resolution in relation to the Stratton survey, which was introduced several weeks ago, and laid over, came up again. It provides that the city shall take an appeal from the decision of Land Commissioner Williamson approving the Stratton survey in order that all who are adversely affected by the confirmation of the survey may have an opportunity of using the appeal of the city before the Interior Department, that as private parties are alone interested, they shall bear all the expense. It also provided for the discharge of the city's special counsel in the matter. It appeared that several weeks ago the Board passed a resolution approving the decision of the Commissioner, and stating that the city would have nothing more to do with the matter. After some discussion the resolution was lost by the following vote:

Ayes: Talbert, Haight, Gibbs and Brickwedel.

Noes: Foley, Mangels, Danforth, Smith, Rountree, Farren, Acheson, and Scott.

(The Examiner, Tuesday, December 24, 1878, Vol. XXVII, No. 151,) p. 3, col. 4.





PRESIDIO SOUTHERN BOUNDARY

Statement of George M. Wheeler, Lieutenant of Engineers, to J. A. Williamson, Commissioner of the General Land Office in objection to the Stratton Survey.

(January 9, 1879.)

Headquarters Military Division of the Pacific and Department of California.

Presidio of San Francisco, Cal., January 9, 1879.

Hon. J. A. Williamson,  
Commissioner General Land Office,  
Washington, D. C.

Sir:

I have received from the U. S. Surveyor General in San Francisco, California, a copy of your letter to him of November 11, 1878, approving the Stratton Survey of the Pueblo of San Francisco; and have been informed I would be allowed till January 20, 1879, in which to file my statement in appeal from your decision, should I desire to do so.

Instead of appealing from your decision confirming so much of the Stratton Survey as relates to the Military Reservations, I beg you will allow me to ask you to reconsider your action so far as the Military Reservation, known as the Presidio tract, is concerned.

I venture to ask a hearing in this matter for the reason that I am convinced important facts were not known to you at the time your decision was made.

First:-

Permit me to quote from your letter the following passage:

"When Stratton made his survey he conferred with the local military authorities, and received their assistance in establishing the lines of the reservation.

"General McDowell was then in command, but it does not expressly appear whether he assented to the survey."

At the time in question Major-General Halleck commanded the division of the Pacific, and General McDowell commanded the Department of California, both having their headquarters in San Francisco.

To show you how the military authorities regarded this survey of Stratton, I append hereto a letter from Major-General Halleck to the War Department, of June 11, 1866, and a letter from General McDowell to General Halleck's Headquarters, of June 9, 1866, with the sub-reports connected with the latter. (Letters marked 1 and 2.)





You will see from these papers that so far from assenting to this survey, the local military authorities denounced it most emphatically, and did so from the conviction that Stratton was in league with private parties who sought to obtain a part of the public domain without any equivalent. General Halleck says of the act as follows:

"It appears that certain notorious land grabbers of this city had formed a conspiracy with some employes of the United States Surveyor General's Office for the purpose of getting possession of some two hundred or more acres of the military reserve at the Presidio."

From General McDowell's letter you will see the nature of the assistance given by the military authorities in establishing the lines of reservation.

It is difficult for me, even at this late day, to write of this matter, and use only the language of an official document. I had asked the U. S. Surveyor General to establish the lines of - not the Presidio reservation, for these lines had been established in 1850-51 - but of the San José reservation which had not then been marked.

In this application to run the San José line, the U. S. Surveyor's clerk and deputy obtained a detail of soldiers, without my previous knowledge, and used them to run out the Stratton survey of the southern line of the Presidio.

Now that all the papers herewith submitted to you may never have been sent from the War Department to the Interior Department, and thus the latter have been in ignorance of them, I can well see. But how, in view of the summary action taken, within a few hours after the line was run, Stratton could have made such a report as to deceive his superiors as to the nature of the assent and assistance of the local military, I can not see.

It was the town talk - the scandal of the day - and in every one's mouth.

You will see, so far from assenting, I reported that I had ordered that they - Conway and Stratton - should not be allowed to come on the public ground; that I had taken down the fence and shanty which, with their evident knowledge and connivance, were put on the Presidio reserve; and had requested that a new survey should be made hereafter in connection with an officer of the army, and by some other and more faithful and less loose agents than - Messrs. Conway and Stratton.

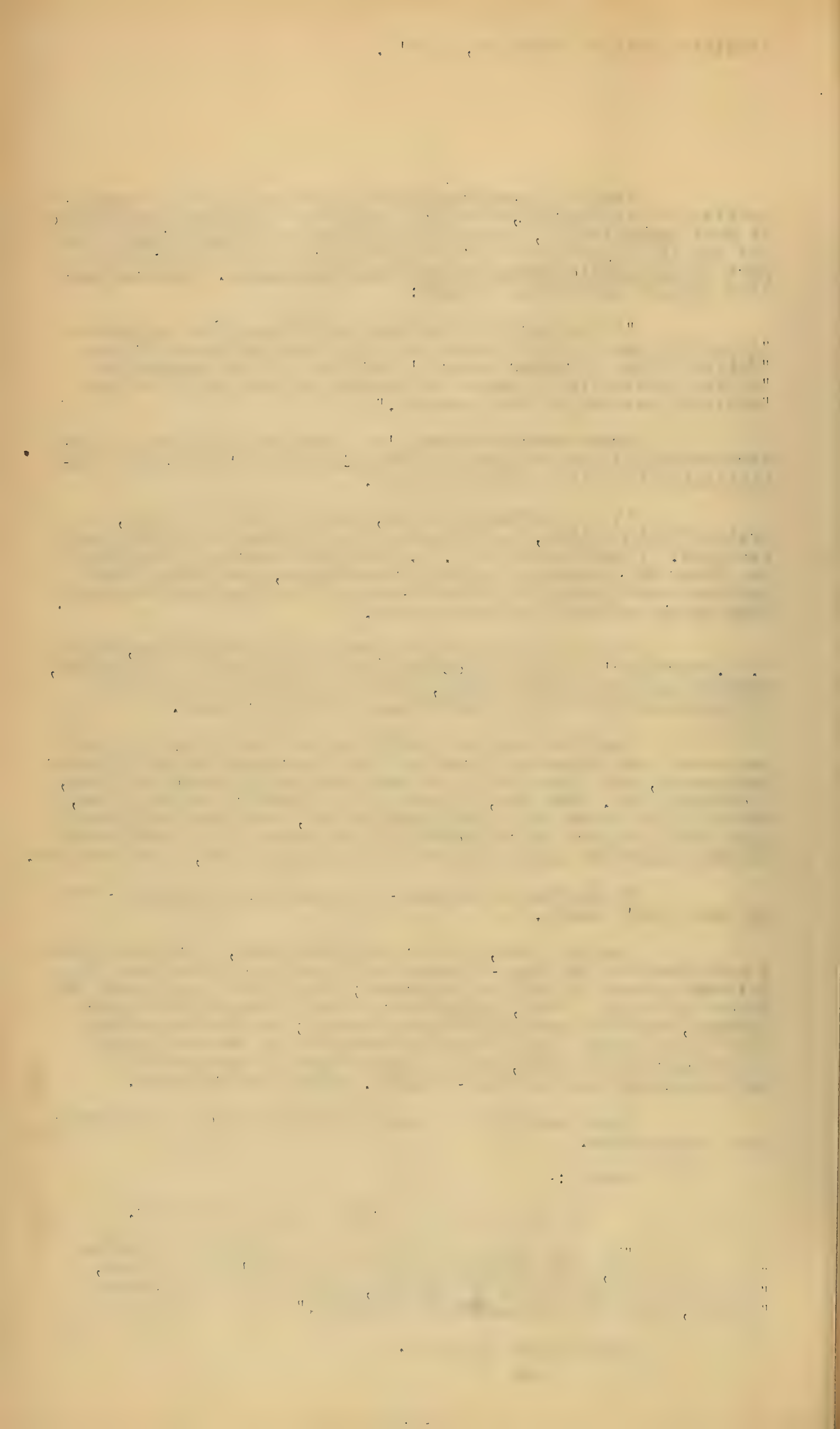
Thus much for the assent and assistance of the military authorities.

Second:-

I ask to quote further from your letter.

"It also appears that the city assuming the survey to be correct, took possession up to Stratton's south line, platted the lines as city property, and sold lots to divers people, who took possession of the same."

Such is not the fact.





The southern line of the Presidio is now substantially as it has been since it was established, some thirteen or fourteen years before Stratton made his survey.

The city did not, and has not, taken possession up to the Stratton line, and the people have not taken possession of the lots referred to. The only possession -- if their acts can be so called -- was for the few hours that Red Mike's# gang of roughs were on the Presidio running a fence across it, and this before Stratton had made his report, and, of course, before the city knew anything of the existence of

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# This same Red Mike is now under indictment of the Grand Jury for murder.  
-----

his line.

You will find in some city maps the names of Butterworth, E. L. Sullivan, and J. W. Dwinelle, as owners or claimants of the land between the Stratton line and that held by the military authorities, and held by the latter uninterruptedly since the beginning.

J. W. Dwinelle was at the time the City Attorney, and was in collusion with Butterworth, Sullivan & Co.

As bearing on this point, I make the following extract from the report of the U. S. Surveyor General for California, dated San Francisco, December 8, 1869, to Hon. Jos. S. Wilson, Commissioner of the General Land Office, viz:

. . . . .

In company with Major-General Ord I have lately visited the ground. On Stratton's eastern boundary is a board fence, which has for some years marked the eastern line of possession by the military authorities. This fence is parallel with Larkin Street, and is along the line of a street of the city. At the southern end of this fence is a stone monument marking the point at which Captain Keys (sic) planted the cannon, which cannon is supposed to have been removed by the Vigilant (sic) Committee in 1856. This cannon is on an eminence which commands a large portion of the Presidio to the north and west. From the stone monument an old picket fence, erected by the military authorities, extends to the southern side of a pond known as the Mountain Lake, and from the end of this fence, on the southern edge of the lake and thence down its outlet to the ocean, Major-General Ord considers as the western boundary, and allows no settlers within those boundaries except such as are under the control of the Military Department of the United States. Along Deputy Stratton's southern boundary there is no fence, nor has there been one. Deputy Stratton informs me by letter that the distance from his south-eastern corner to the corner formerly marked by the cannon, and now by a stone monument, is chains 19.02, measured along the existing fence.

. . . . .

From this you will see that in 1869 there were no occupants of the disputed territory. There have been none since that time, nor were there any between the time of Stratton's survey and General Ord's coming to the command.





Third:-

The reservation, as declared by the President, comprised "all 'north' of a line running in a westerly direction "from the south-eastern corner of the Presidio tract."

Yet the Stratton survey carves out of this tract some one hundred and nineteen acres as swamp and overflowed land, which he says " is of the same general character as the other "marsh and tide lands along the ocean and around the bay of "San Francisco, and are mostly overflowed at ordinary high tide."

This land is now claimed by certain parties as having been by them purchased from the State of California, having been previously, as stated by Stratton, segregated by the State agent and the county surveyor of San Francisco County, whose notes Stratton adopts and appends to his survey.

The military authorities will undoubtedly resist the claim thus set up, and I am aware that you cannot now determine the question definitely as between those claimants and the United States, but I ask you not to give your sanction to this survey for the reason that the lands thus excepted from the Presidio comprise a long narrow irregularly shaped strip, in which are a small fresh-water pond fed by springs entirely beyond the influence of the tides, and includes some of the gardens and meadows of the post.

At high tide, the other day, the current from the outlet of this pond was still flowing to a slough near the eastern side of the reserve. This stream spreads out, and in some places the land on each side is boggy; but, even if the order of the President determining the limits of this military reserve did not forbid any such exception as has been made, it is a plain fact, obvious to the mere passer-by, that lands have been excluded which no just construction of the law warrants. You might as well exclude a man's spring and trout-brook, and any adjacent damp ground.

So far from being, as Stratton asserts, as of the same character as the other marsh and tide lands along the ocean and around the bay, and mostly overflowed at ordinary high tide, it is a fact that the little pond near Fort Point is partly covered with cat-tails, and the stream flowing from it with water-cress - both plants being fresh water plants -- and the water in the pond is always at the same height; is never affected by the tide; and is soft, potable water, as is that of the stream flowing from it.

Fourth:-

General McDowell was relieved in the command of the Department of California in 1868 by General Ord.

Up to the time of his quitting California nothing was heard by him of Stratton's survey further than is shown in the papers accompanying his letter to General Halleck.

After the conduct of those officials they had no further relations with them, and nothing came from the General Land Office concerning Stratton's survey during General McDowell's time.

But General Ord, General McDowell's successor, did protest against this survey of Stratton, and, as you say, did





Presidio southern boundary, cont'd.

so November 5, 1868.

Fifth:-

General Ord, under the orders he received from the War Department, and in accordance with the views of the Surveyor General of the time, caused a survey to be made by Lieutenant Wheeler, of the Engineer Corps, aided by other engineer officers.

This survey was made with great care; a map was made from it, and that map was duly sent to the General Land Office, and I invite your attention to a copy of it, sent herewith (marked 3), and especially to the action taken on it by your predecessor, as follows:

"The above survey of the Presidio Military reservation by Lieutenant George M. Wheeler, (in 1870) being in conformity with the modified President's order, of December 31, 1851, is adopted as correct, and hereby approved.

Willis Drummond, Commissioner,  
Department of the Interior,  
"General Land Office  
"August 19, 1872."

I also add to the foregoing the following copies of the letter transmitting that map from your office to the Surveyor General's office in San Francisco, and his attestation of the authenticity of the papers referred to (marked 4 and 5.)

Department of the Interior,  
General Land Office,  
Washington, D. C., Nov. 13, 1872.

James R. Hardenburgh,  
U. S. Surveyor General, San Francisco, Cal.

Sir:

I transmit herewith, for your information and the file of your office, a copy of the report of Lieutenant George M. Wheeler, Corps of Engineers, U. S. Army, dated San Francisco, Cal., June 28, 1870, upon the survey of the military reservation at the Presidio of San Francisco, Cal., also a tracing of the map of the survey made under Lieutenant Wheeler's directions and approved by Brigadier General E. O. C. Ord, Commanding the Department.

The plat of the survey made by the War Department was approved by this office August 19, 1872.

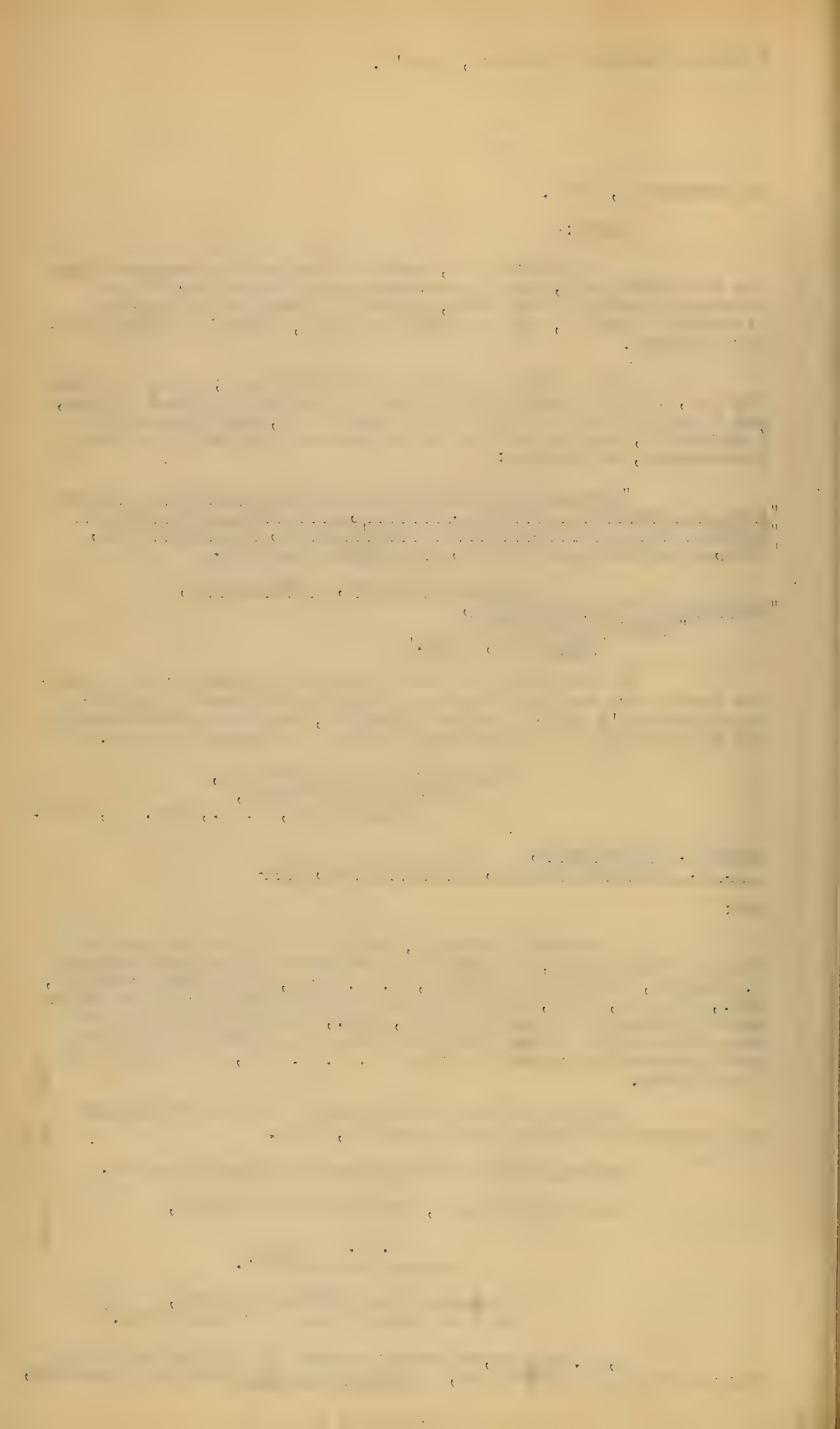
You will please acknowledge the receipt hereof.

Very respectfully, your obedient servant,

W. W. Curtis  
Acting Commissioner.

Office of the Surveyor General, )  
of the United States for California.)

I, T. Wagner, Surveyor General of the United States for the State of California, do Hereby Certify that the preceding,





and hereunto annexed, is a full true and correct copy of a certain instrument of writing now of record and on file in this office, and in my custody; that I have carefully compared the same with said original and that the same is a correct transcript therefrom, and of the whole of such original.

In Testimony Whereof, I have hereunto signed my name officially, and caused my Seal of Office to be affixed at the City of San Francisco, this 20th day of December, 1878.

(SEAL) Theo. Wagner,  
U. S. Surveyor General for California.

As I do not know what, if any force, the act of a commissioner has with his successor, and therefore, for fear you may not consider as we had done, that this question of the boundary of the Presidio Tract had been decided so far as your office could decide it, I ask your attention to some few points bearing on the question of the southern boundary line.

In the first place, I dwell especially on the language of the President's two orders making this reservation.

That of November 5, 1850, is as follows:

"1st. From a point eight hundred yards south of Point Jose to the southern boundary of the Presidio."

Here the initial point is a point 800 yards south of Jose; thence -- not in a direct line to the pond in the Mountain Lake -- but to the southern boundary of the Presidio.

This evidently supposes the southern boundary to be a known line. The President's order of 31st December, 1851, says:

"2nd. The Presidio tract and Fort Point embracing all the land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract."

Here again it is evident the Presidio tract was recognized as having a prior existence to the order, and its south-eastern corner is made the initial point in the reduced reservation of the second order.

Yet Deputy Stratton says:

"Both the map and the written description clearly represents the Presidio reservation as being bounded in the south by a straight line from the southern extremity of Mountain Lake, towards a point 800 yards due south of the northern extremity of Point San Jose; and as this line was described (sic) thus unmistakably in both documents, I established the southern boundary of this reservation in accordance therewith, believing that the same line should be adhered to in this case as in surveying private land claims, viz.: to follow strictly all specifically described lines."

Yes! but that is precisely what he did not do! He followed a conjectural sketch, and disregarded the language of the President's two orders, and neglected to acquaint himself with the facts which the history of the case would have made clear.





I beg to quote again from the report of the Surveyor General heretofore referred to.

He says, December 8, 1869:

Deputy Stratton's survey is evidently based upon the fact that in the sketch transmitted with the President's order to set apart these Reservations, the southern boundary of the Presidio Reservation appears to be a tangent to the circular boundary of the Point San Jose Reservation, drawn through the southern boundary of the Mountain Lake. It is to be noted, concerning this sketch, that General Totten, in transmitting it to the Secretary of War, speaks of it only as "conjectural", and also that it contains neither courses nor distances being tangent to the Point San Jose circle; and, although, upon the sketch an eastern boundary is marked for the Presidio Reservation, yet, with the sketch alone to guide him, it would be very difficult for a surveyor to determine on what point on his tangent he should start his eastern boundary. The sketch is too small and the scale on it too imperfect for any such accuracy of location as is demanded in surveying the streets of a populous city; and it seems plain to my mind that the sketch is to be held subordinate to the call in the President's order for "a line running in a westerly direction from the south-eastern corner of the Presidio tract to the southern extremity of a pond", etc. (See printed copies attached to Stratton's deposition.) In the President's first order of the 24th of June, 1851, he speaks of "the southern boundary of the Presidio," and General Totten, in his communication to the Secretary of War, of the 28th of October, 1851, speaks of "the south-eastern corner of the Presidio tract." All these expressions evidently point to the south-east corner of the Presidio as a point already well known and established, as it plainly had been by the planting of the cannon by Captain Keys (sic) and others, and by the confirmation of the Board of Army and Navy Officers. I think, therefore, that the official plat is in this particular erroneous, and that this tract should be re-surveyed in conformity with such new instructions as may be issued by the proper Department hereafter.

The President's first order was dated November 5, 1850.

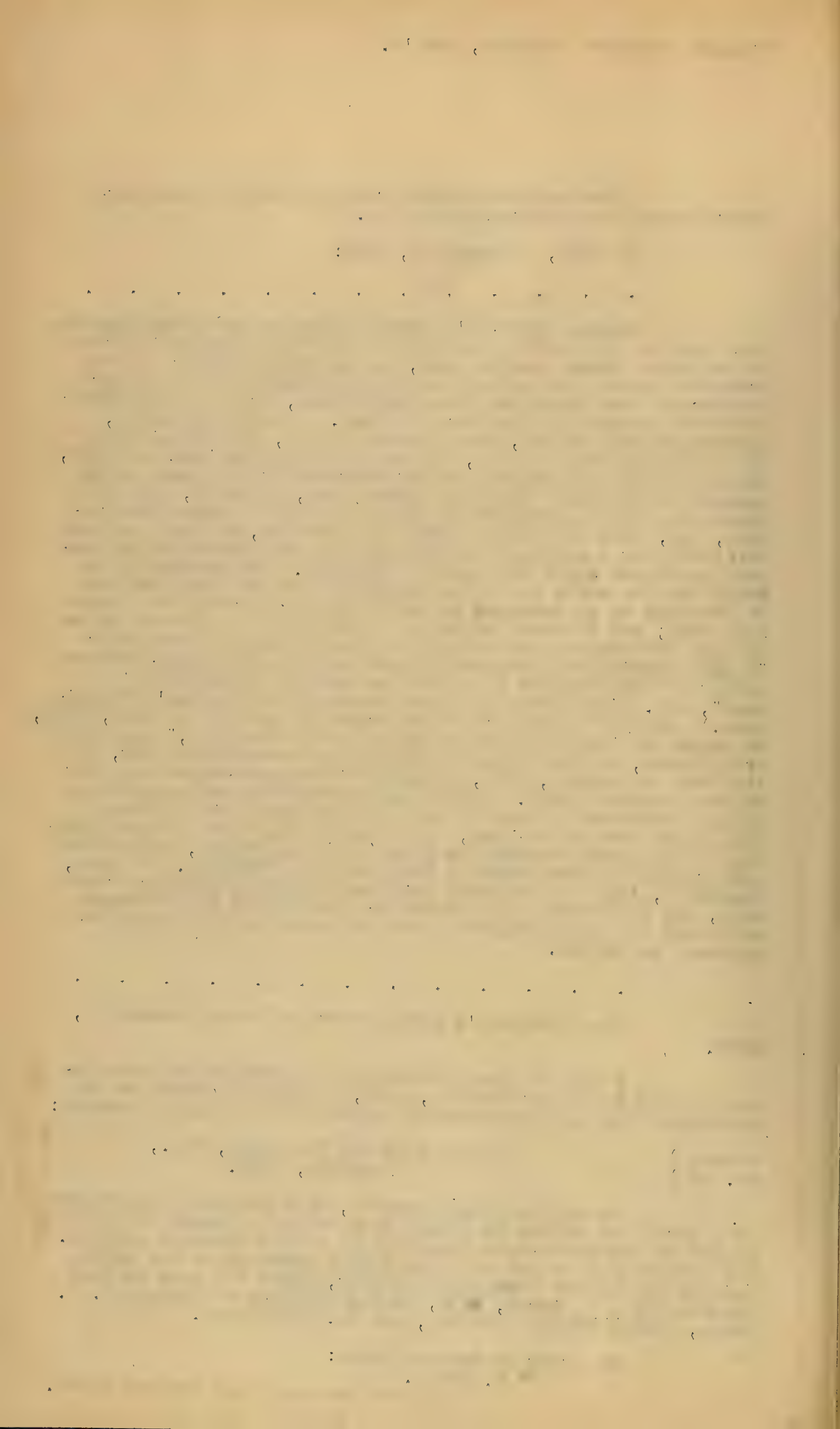
I now ask your attention to a copy of an order issued at the Presidio 17th May, 1850, ordering a cannon to be planted at the south-easternmost angle of the Presidio reserve:

Orders ) Presidio of San Francisco, Cal.,  
No. 14 ) 17th May, 1850.

First Lieutenant Lundrum, will this day take charge of a party and attend in person to erecting a cannon in the ground at the south-easternmost angle of the Presidio reserve. The cannon will be set with the muzzle down and at the stake pointed out by the commanding officer, being the same as that planted the April, 1850, in the presence of Captain E. D. Keyes, Brevet Captain Halleck, and Mr. Merrifield.

By order of Captain Keyes:  
C. Smith.

Second Lieutenant and Adjuant (sic).





Presidio southern boundary, cont'd.

Now before any action was taken by the President the Presidio tract or reserve was, as above stated by the Surveyor General for California, established by a Board of army and navy officers, and the south-east corner or angle was marked first by a cannon, planted by General (then Captain Keyes, Commanding the Presidio.) and then by a stone monument, which replaced the cannon. The point was, at the time of the Wheeler survey, identified by General Keyes, and its locality then determined by Lieutenant Wheeler with reference to its bearings with several prominent points in the vicinity.

Now, as showing that Stratton himself knew of this point, and adopted it, you will see from an examination of his survey that for the purpose of getting his western (sic eastern is correct) of the reserve he was obliged to run from this very well established, well known point, which he saw fit to disregard when running the southern boundary.

Now is not this very fact conclusive in establishing the Keyes - cannon - planted - point as the south-eastern corner of the Presidio tract, as referred to by the President?

What sanction could Stratton have for using this point for his eastern line that does not hold good for his southern line, and you have seen that it was planted at the southwestern angle of the tract.

I trust I have not too much taxed your patience; that this statement may find favor in your eyes; that it may be consistent with your duty to confirm the action heretofore taken by Commissioner Drummond; and that you will approve and adopt the Wheeler survey -- and not that of Stratton -- in so far as concerns the Presidio Reservation.

I have the honor to be,

Very respectfully, your most obedient servant,

(  
Maj.-Gen., Comdg. Mil. Div. Pac. & Dept. Cal.)

P. S.

I also append copies of letters from Generals Halleck, McDowell and Ord, (marked 6), with accompanying papers bearing on the case.

#### Appendix.

##### 1.

Headquarters Military Division of the Pacific.  
San Francisco, Cal., June 11, 1866.

General E. D. Townsend, Assistant Adjutant General, U. S. Army.  
Washington, D. C.

General:

On the afternoon of March 27th, I received information that a party of squatters assisted by a detachment of soldiers had seized and were fencing off about two hundred acres of the Presidio Reserve, and erecting shanties by means of which





Presidio southern boundary, cont'd.

they expected to maintain possession as pre-emptors. I immediately directed Gen. McDowell to eject them, and to ascertain and report how it was that the troops of his command were assisting these land-grabbers in getting possession of the military which they were employed to protect.

I forward herewith his report and accompanying papers.

It appears that certain notorious land-grabbers of this city had formed a conspiracy with some employes of the United States Surveyor General's Office, for the purpose of getting possession of some two hundred or more acres of the military reserve at the Presidio. As this reserve has been fenced in since 1850, they contrived to get admitted within the enclosure on the pretence of making an official survey. And to avoid any suspicion on the part of the military authorities in regard to their object, they had clandestinely procured a detail of soldiers to assist in constructing their fences and shanties. They had also employed a gang of bullies under a notorious character called "Red Mike" to hold forcible possession of the land which they were thus cutting off from the military reserve. Fortunately their project was discovered in time to defeat it, at least for the present.

The commanding officer of the Presidio seems to have lent his assistance through sheer ignorance and stupidity. There is, however, abundant reason to believe that the employes of the Surveyor General's Office were parties to the plot, and expected to profit by its success. The bold impudence of these parties in thus attempting to obtain the aid of government officers to assist them in stealing government property, would seem incredible, were it not for the fact that the leaders are the same men who successfully employed government officers and used the government money in stealing New Almaden from its rightful owners. Having been entirely successful in that plot, it is not strange that they now attempt to conspire with other government to rob the government itself. It is presumed that their project will not be abandoned because of their present defeat. Indeed, it is reported that they have already an agent in Washington laying siege to the Land Office.

Very respectfully, your obedient servant,  
H. W. Halleck, Major General, Commanding.

-oOo-

2.

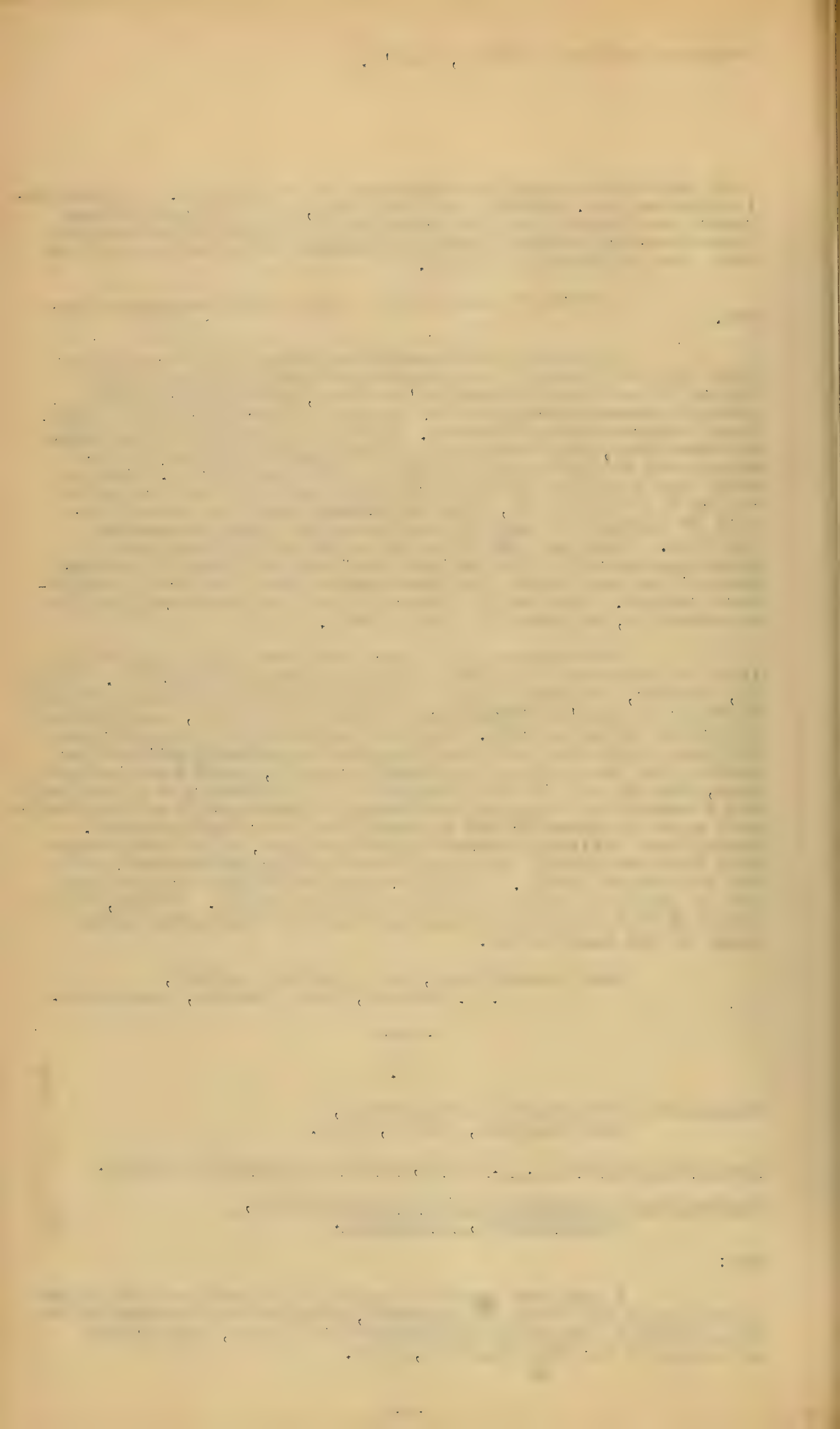
Headquarters Department of California,  
San Francisco, June 9, 1866.

Lieutenant-Colonel R. U. Scott, Assistant Adjutant General.

Headquarters Military Division of the Pacific,  
San Francisco, California.

Sir:

I have the honor to report as follows concerning the intrusion on the "Presidio Reserve", brought to my notice by the Major General commanding the Division in person, late in the afternoon of the 27th of March, 1866.





Immediately on the Division Commander's leaving my headquarters, I sent the first officer of my staff whom I could find (Captain Hoyt) to the Commanding Officer at Presidio, to direct him to immediately remove all trespassers from the Military Reserve, and prevent the erection of fences or other trespasses thereon. (Captain Hoyt's report is herewith marked "A".)

As Major Allen stated to Captain Hoyt that he had furnished the detail of soldiers to make the fence in question, in compliance with orders from my headquarters, he was called on for a report (which is herewith marked "B".)

The letter referred to in that report as having been received from the Commanding Officer at Point San Jose is herewith (marked "C".)

The report from Major Allen required by the order enclosed on his first report ("B") is herewith (marked "D".)

The statement of Assistant Adjutant General Drum explaining the pencil note transmitted by Major Allen, and affixed to his second report, is herewith (marked "E".)

Lieutenant Colonel Williamson's report of the interview he had by my direction with Mr. Conway, clerk to the U. S. Surveyor General, is herewith (marked "F".)

The report of the Suttler at Presidio, whom "Red Mike's" statement to Captain Hoyt implicated in the matter, is, together with the affidavits of "Red Mike" and Mr. Thorne, herewith (marked "G".)

Mr. Conway's letter to me of May 3rd, transmitting copies of the report of the survey made by Deputy Stratton, with a traced copy of the map of the two reservations, is herewith (marked "H".)

Mr. Conway's letters of May 11th and 14th, with accompanying papers, are herewith (marked "I", "K" and "L".)

The foregoing comprise all the documents bearing on the case.

From them it will be seen:

1st. That Mr. Conway claims the surveys were executed in accordance with the proclamations of the President of the United States and the instructions from the Commissioner of the General Land Office. (See "H".)

2nd. That the Deputy appointed to make these surveys was Mr. Stratton.

3rd. That when Mr. Conway was asked by my staff officer, Lieutenant Colonel Williamson, concerning these instructions from the Land Office in Washington, he said he could not show them because they were in the hands of his Deputy, who was then in the field running the line. (Doc. marked "F".)

4th. That he disclaimed all knowledge of a party of civilians, acting in concert with the Surveyor, making a fence on the line run by the Deputy before ever that Deputy had made his report, or that report had been confirmed; "That it





was none of his business, and he could not help it." (Doc. "F".)

The inference which is left to be drawn from all that Mr. Conway states is, that he has been simply acting under specific instructions from his superiors and that he was not in any way connected with or aware of any private operation to seize upon the land which his surveys would cut off from the Reserve.

What are some of the facts in the case not to be found in Mr. Conway's statement?

1st. That the application to me for an order for the detail of men to assist (sic) in what I understood was to be purely a public duty -- the "marking" of a line of the Military reservation -- was, instead of being sent in the ordinary way either by a messenger or by the mail, given to Assistant Adjutant General Drum by Colonel Stevenson, Sutler at Presidio, who received it from General Hutchinson, a well known citizen of San Francisco; and,

That the day before the survey was to be made at the Presidio, Mr. J. Thorne, a well known person in connection with "land operations", whom Mr. Conway stated had no connection with the office and who was the employe of "Red Mike & Co.", comes to the Occidental Hotel whilst Colonel Drum is at breakfast, and sends up word on a card to ask for the order for the detail of men for the surveyor, whether or not it had been given. (See doc. "E".)

And on getting a pencil note, stating that it had been sent to the Commanding Officer at Presidio, repairs there, and being received by the Commanding Officer as the person for whom the detail was intended, obtains the men which both Mr. Conway and Mr. Stratton desired to have, and uses them for his own purposes, under the eye of the Deputy, to build in connection with a party of roughs, under the noted "Red Mike", a fence cutting off nearly two hundred acres of the Government land, and in putting up a squatter's shanty on the excised portion. This whilst the survey was incomplete, and, of course, before it was reported and accepted.

It will be seen that "Red Mike" admits he was notified by Mr. E. L. Sullivan some time before the survey was commenced at the Presidio, that his services would be required (see Captain Hoyt's report "A".); also, that as soon as it was commenced, he was on the ground, under Mr. Thorne, with lumber, materials and tools enough to build immediately a fence, half a mile or more in length, and erect a squatter's shanty. All this certainly shows an understanding between the squatter's party and the surveying party.

It will be seen that Mr. Conway claims not only that the survey was ordered from Washington, but that the particular survey that was thus made was so made in accordance with instructions from the Commissioner of the General Land Office, as well as in accordance with the proclamation of the President of the United States. (See Lieutenant-Colonel Williamson's report "F", and Mr. Conway's letter to me "H".)

Mr. Conway, in answer to my application (copy herewith marked "M"), furnishes me in his letter of May 14th copies of all the instructions and papers received by the Surveyor-General here from the Land office in Washington. But you will





look in vain for any such instructions as will justify Mr. Conway's statements.

You will see that so far from having ordered this survey, much less directed the particular manner of making it, the Land Office supposed it had already been made.

In June 1864, the Commissioner asked for a report, which Mr. Conway says was made October 29, 1864 (of which No. 8, of doc. "L", herewith is a copy.) That report says the plat will be finished and forwarded at an early day.

The only other communication from the Commissioner of the Land Office is his letter of July 19, 1865 (extract of which is No. 9, of doc. "L", herewith.)

This does not direct a survey much less gives any instructions as to how one is to be made. It simply calls for a map. Mr. Conway says himself, concerning this communication (see his letter of May 14, 1866), "from the tenor of which it would appear that the Commissioner presumed that these lines had 'been surveyed'; and farther he says:

"It will be seen that the Land Department, on the 19th of July, 1865, presumed that the surveys in and around the 'Pueblo', referred to in the report of this office, dated October 29, 1864, had been executed." "Had been executed." Mr. Conway is certainly inexact when he informs me that in cutting off some two hundred acres of the public land of the Presidio he is acting in pursuance of instructions from the Commissioner of the Land Office, which instructions are with the Deputy Stratton in the field, when it appears from his own statement that the Commissioner so far from ordering the survey supposed it had long been made and simply wished a map prepared.

Mr. Conway would have been more correct if he had said, what certainly from his own showing was the fact, to wit: That he had no instructions from the Commissioner to make any survey but that to comply with his order for a report and plat; and the U. S. Surveyor General of California had found himself obliged to make certain surveys to obtain information necessary for the purpose.

The point I wish to make is, that the order for this survey itself, as well as the particular instructions for making it, had their origin here in San Francisco and not in Washington!!

Sometime early in 1865, wishing to have the limits of the Military Reservation No. 1 (Point San Jose) marked by the Surveyor-General, I was informed that it could not be done, as there were then no funds on hand applicable to the purpose.

On or before the 26th of September, 1865, this deficiency seems to have been removed, for on that day, I am informed, a Deputy is to be placed in the field to survey the Pueblo limits, which would give me the lines I wished without expense to the United States. (See letter of Surveyor-General herewith No. 13, of doc. "L".) The funds, I am informed, were furnished by the City of San Francisco, to ascertain its limits under the decision of the U. S. Circuit Court in the "Pueblo" case.

I will now state, what I have been informed by some





of the parties interested and what I have no doubt are, some of the facts in the case, which do not appear in any of the many papers herewith submitted.

Mr. E. L. Sullivan, of this city, becoming persuaded the Presidio Reservation, as claimed and now held by the military authorities, and as held by them since 1850, contains more land within its southern boundary than belongs to it under the proclamations or orders of the President, associated himself with Mr. S. L. Butterworth and W. T. Coleman, for the purpose of taking measures to occupy the land as soon as the official survey should cut it off from the Reservation and throw it into the lands of the "Pueblo", and thus by prior occupation acquire a claim to its purchase from the City of San Francisco.

How Mr. Sullivan obtained his information from the Land Office I have not ascertained.

When the association broached the subject to Mr. Conway he informed them they were anticipated in their plan by another party, who had already taken steps to acquire this land. This second party had been instrumental in getting the funds for the survey from the city.

The first and second parties then became associated together, and, as I understand, admitted a third party, whose name or names have not been mentioned to me. As their part of the enterprise several hundred dollars were contributed by the first party to purchase the necessary lumber, etc., for the fence and improvements necessary for their purpose.

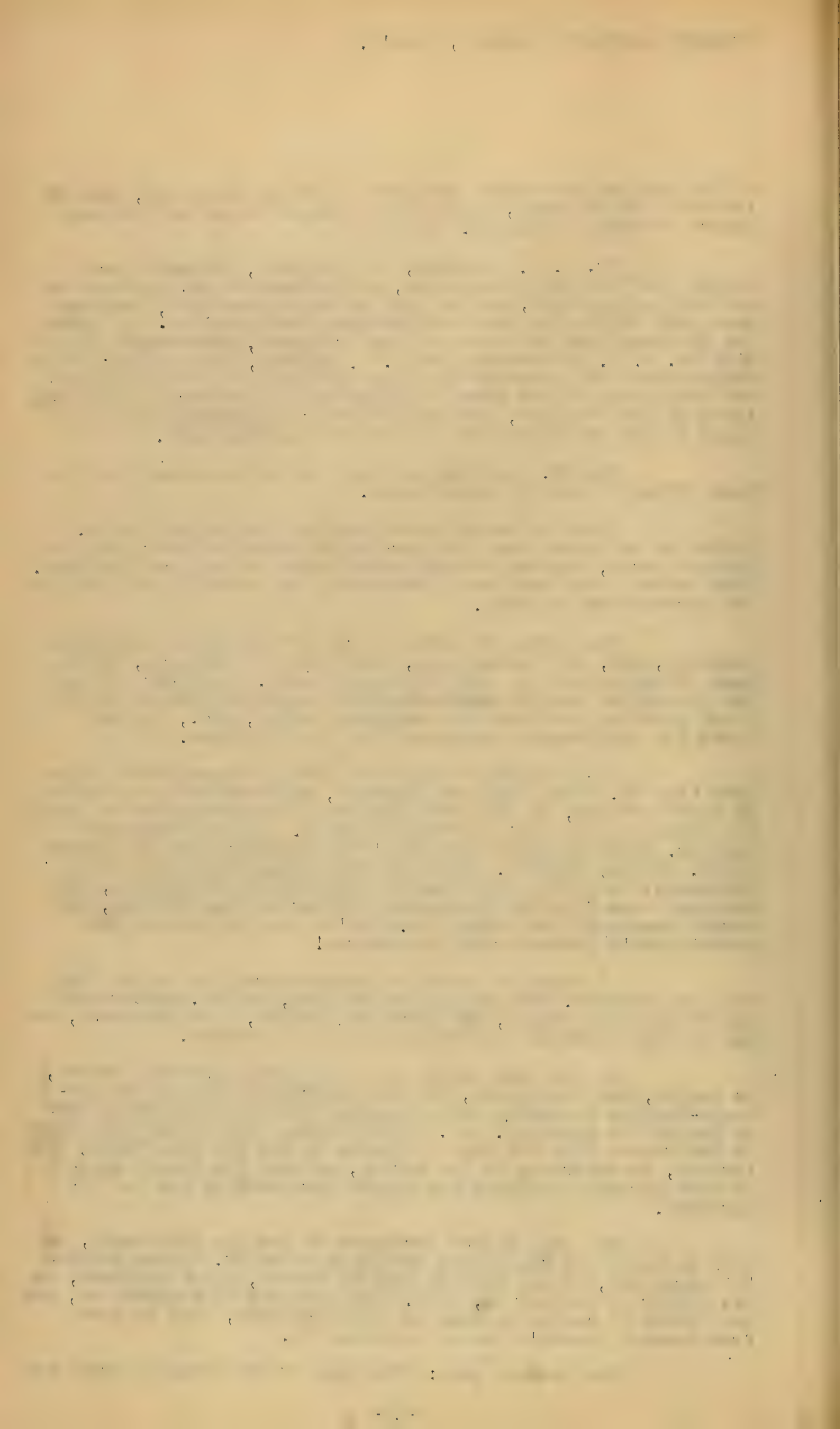
I am obliged to say that these circumstances go to show that Mr. Conway was not ignorant, as he affected to be to my staff officer, of the movements of the squatters who followed his Deputy in the survey of the Presidio. You will remember that Mr. Sullivan tells "Red Mike" his services will be needed by Mr. Thorne; that Mr. Thorne is the person who goes to the Occidental Hotel for the order for the detail of soldiers, and obtained them from the Commanding Officer of the Presidio, and works them under the Deputy Stratton's eyes in building the association's fence across the Reserve!

I think it right to mention here that at the time this was done Mr. Coleman was in New York, and Mr. Butterworth was at San Luis Obispo, and were not knowing, I am convinced, to any of the immediate proceedings of their partners.

It has been shown that this survey was not ordered, as stated, from Washington, but was undertaken here by the Surveyor-General to enable him to comply with the requisition made on him by his superior. Mr. Conway claims that it has been made in accordance with the data furnished by the War Department; and further, in referring to the survey, he says the Deputy appears to have strictly followed the sketch furnished by the War Department.

The only sketch furnished by the War Department, as will be seen from the papers furnished me by Mr. Conway (marked "L" herewith), is one sent by General Totten, Chief Engineer, in his letter of October 28, 1851. How accurate that sketch is, and how little it can be claimed as "instructions", will be seen from General Totten's letter enclosing it.

The General says: "No plat of the Presidio tract is





"on file in this office, and it is respectfully suggested that the "Surveyor-General of California be referred to Captain Halleck, "Corps of Engineers, at San Francisco, for sketches, which will "enable him to run the lines in conformity with the foregoing "description.

"The sketch herewith shows the Reserve as originally "proposed and conjecturally drawn by the Board, as also the two "separate Reservations now proposed to be substituted for it."

So the sketch given the Deputy by which to run the lines, and which comprises all the instructions outside the President's proclamation, as is referred to as the data furnished by the War Department, and which Mr. Conway says the Deputy appears "to have strictly followed", is one where the original Reserves are, as General Totten says, "conjecturally drawn". "No plat of the Presidio" being on file in his office! This is simply no data at all, and, as the whole of General Totten's letter plainly shows, is a mere sketch to give a general idea of the difference between the original one large Reservation, according to the first proclamation, and the substitute of two smaller ones as ordered in the second proclamation.

Had Mr. Conway been governed by the instructions to be found in the War Department's papers, and the want of information they disclose, he had the opportunity of doing so by referring to General -- then Captain -- Halleck.

He only, according to the very letter of General Totten which sends the conjectural sketch, being able to give the U. S. Surveyor-General the information by which the lines can be run, "in conformity with the foregoing description." This description is embodied in the second and last proclamation of the President, and is the one according to which the survey should have been run.

How little the Deputy has followed what was ordered by the President and the War Department the general commanding the Division will appreciate, when he is informed that the southeastern corner of the Presidio, which is made the initial point in the second and last proclamation of the President, instead of being where I am told by him the Board established it, "on the hill", is sought to be fixed at the foot of it, some hundreds of yards to the north of where it has been for the last fifteen years.

I will remark that even on the sketch relied on by Mr. Conway this corner is marked as follows: "S. E. corner of Presidio, as supposed." As supposed!!-- not as known. How can this be called "data" on which an important survey can be made to depend, and that in the face of General Totten's statement, that no "plat" of the Presidio is on file, and that the information necessary to run the lines is to be had from the officer who, as Captain of Engineers, was associated with the Board who established and marked the initial point?

You will see that however determined Deputy Stratton was to follow the conjectural sketch, which he calls a certified map, in the case of the Presidio Reserve, he was yielding in that of the Point San Jose Reserve, and instead of following the language of the proclamation and running the arc of a circle eight hundred yards radius from the northern extremity of the boundary of three straight lines for the eastern, southern and western limits at about eight hundred yards from the same point. At about eight hundred yards! Rather loose language for an accurate survey, where feet and inches are of consequence,





and, moreover, if you refer to the so-called certified map, or conjectural sketch, you will see how little he has to warrant any such assertion. Yet on this faulty conjectural pen sketch on a scale about a mile to an inch, he proposes to Major Bowman to "include a margin outside of the eight hundred yards of the proclamation, if he, Major Bowman, desired it; and it seems we are indebted to Major Bowman's forbearance that the "Peters" of the vicinity of Point San Jose have not been robbed to pay the "Paul" of the Presidio.

This very accommodating Deputy has been obliging enough to some other private parties to survey for them some of the low lands on the Presidio Reservation, which they claim as swamp and tide lands.

In view of all the foregoing, I have felt it my duty to ignore the whole work of Messrs. Conway & Stratton, and have ordered that they shall not be allowed to come on the public ground, and have taken down the fence and shanty which, with their knowledge and evident connivance, were put on the Presidio Reserve. I hold the lumber used by the squatters as property of the Government, being a "realty" on its ground, and I beg that the survey be made hereafter in connection with an officer of the army, and by some other and more faithful and less loose agents than -- Messrs. Conway & Stratton.

I have the honor to be, very respectfully,  
Your obedient servant,  
Irvin McDowell,  
Major General Commanding Department.

-oOo-

A.

San Francisco, Cal. March 28, 1866.

General:

I have the honor to report that, in pursuance of your verbal instructions, given me yesterday, I went to the Presidio and gave Major Allen, the Post Commander, your instructions directing him to immediately remove all trespassers from the Military Reserve and prevent the erection of fences or other trespasses thereon.

I found that a gang of men were there engaged in erecting a board fence on a portion of the Reserve, having already completed it for a considerable distance. I called the attention of Major Allen to the fact; he said that he had received orders from Headquarters directing a detail of men to assist the Surveyor in running the lines of the Reserve, which he had furnished and that a portion of them he believed were assisting in digging post holes for the fence, he supposing from the order for a detail of men to assist in surveying the line and from information received from the Sutter (Colonel Stephenson), (sic) that the work was authorized.

Upon receiving your instructions the post commander gave orders that the work on the fence be stopped immediately.

Captain Ramsay, who received Major Allen's orders, and myself, went to the place where the trespassers were erect-





ing the fence, found a number of men there who had been at work on the fence, under the direction of a man known as "Red Mike". Captain Ramsay ordered him to stop further work and leave the premises, to which he readily assented, and with his party immediately left. The man "Red Mike" informed me that he was employed by a man named Isaac Thorn, and that he knew that the fence was being built on what was called the Government Reserve, but that it was placed on lines fixed by the Surveyor, and as Government troops assisted in building the fence, he supposed it was all right. In answer to my inquiry if troops assisted him in building the fence, he said, yes, a party of eight or a dozen had been helping him. Inquired from what point the Surveyor run that line. He said the point was obtained by sighting from Black Point, & being further questioned in regard to his employers, he said that a few days since Mr. E. D. Sullivan told him that likely Thorn would have a job for him soon, and requested him to call at Stephenson's (sic) office and see him; he did so. Saw Thorn and was engaged to put up the fence and was building it as rapidly as possible.

The same evening, by your directions, I sent to the post commander at the Presidio a note, a copy of which is enclosed herewith. Afterwards I saw Mr. E. Conway, chief clerk of the U. S. Surveyor General, and learned from him that the Deputy Surveyor has not yet finished running the lines of the Presidio Reserve, and has not made any report to the office of the Surveyor that it will probably take a couple of days more to complete it.

Very respectfully, your obedient servant,

Jas. T. Hoyt,  
Capt. and A. Q. M.

Maj-Gen. Irvin McDowell, Comdg. Dept. of Cal., San Francisco, Cal.

-oOo-

B.

Headquarters Presidio of San Francisco,

March 28, 1866.

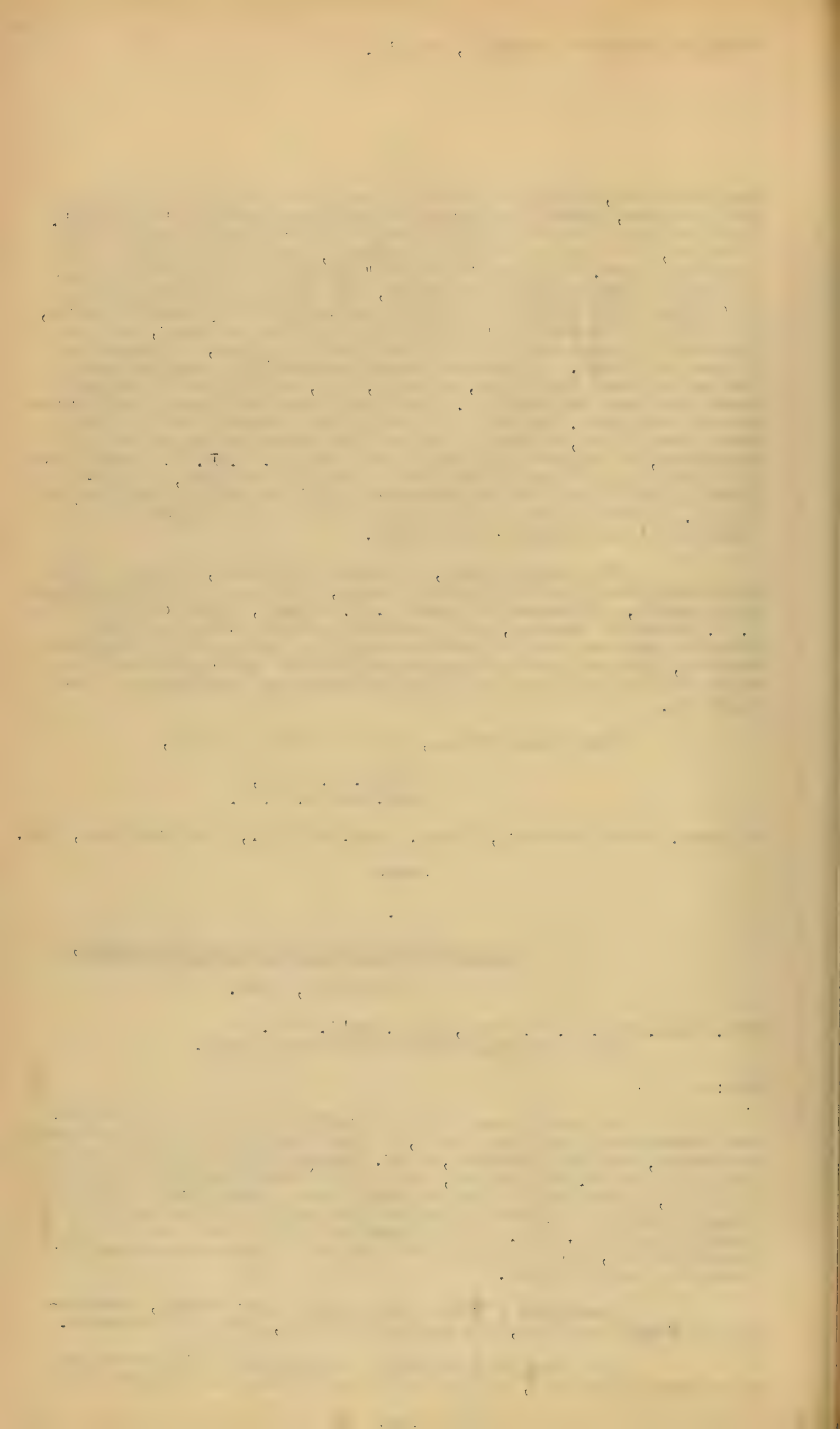
Bvt. Brig.-Gen. R. C. Drum, Asst. ad'j. Gen.  
Headquarters Department of California.

Sir:-

In compliance with instructions from the Major-General Commanding the Department, I have the honor to report that on Monday, the 26th instant, a Mr. Thorne called upon me (in company with Mr. Stephenson, the sutter) and presented a note from you, which stated that he was to make some survey upon the reserve and that orders to afford him facilities had been or would be sent me. Mr. Thorne asked me that a small detail be furnished him, and I ordered six men and a non-commissioned officer to report to him.

Yesterday I received through Major Bowman, commanding at Point San Jose, the enclosed letter, with indorsements.

The work in progress I presumed was being done by Government Surveyors; and not until yesterday was I aware that a





Presidio southern boundary, cont'd.

fence was being erected, the work having all been done since the preceding evening.

Very respectfully, your obedient servant,  
H. A. Allen, Major 2nd Art., Commanding.

-oOo-

C.

U. S. Surveyor General's Office.

San Francisco, Cal., March 22, 1866.

General R. C. Drum, Assistant Adjutant General,  
Department of California.

Sir:

I am in receipt of your favor of 21st instant. I have instructed Deputy Stratton to run any line the Commanding Officer may wish for the uses of your Department, so that the different points can be established with reference to the monuments of the Public Surveys.

I will thank you for a small detail of men to assist the Deputy, if convenient for your department to furnish them.

Very respectfully, your obedient servant,  
E. Conway, Chief Clerk.

-oOo-

D.

Headquarters Presidio of San Francisco, Cal.

March 30, 1866.

Bvt. Brig. Gen. R. C. Drum, Asst. Adj. General,  
Headquarters Department of California.

Sir:

In reply to indorsement from you, dated Headquarters Department of California, March 28, 1866, I have the honor to state that the fences and shanty referred to have been taken down, and that I have placed a guard over the same. In relation to the instructions to furnish the detail, I have the honor to offer the following explanation:

On Monday last Mr. Thorne called upon me and handed the enclosed note -- in pencil -- ("Instructions have been sent to Commanding Officer at Presidio to furnish detail. R. C. Drum, A. A. G.") from General Drum. At this time no instructions having been received, I asked Mr. Thorne how large a detail he required, and furnished it as desired. Being the bearer of the note of General D's. which states that instructions had been sent me to furnish the detail, I supposed him to be the accredited party.

The receipt of S. 196 (enclosed) was the first intimation I had of Mr. Stratton, nor did I then think Mr. Thorne any other but a properly accredited agent, or else how came he





Presidio southern boundary, cont'd.

in possession of General D.'s note.

I enclose report of Colonel Stevenson accompanied by affidavits.

Very respectfully, your obedient servant,  
H. A. Allen, Major 2nd Art., Commanding.

-oOo-

F.

San Francisco, April 24, 1866.

Bvt. Brig.-Gen. R. C. Drum, Asst. Adj. General.  
Department of California.

Sir:

In obedience to the instructions contained in your letter of this date, I have the honor to report as follows:

I was informed by the General Commanding the Department of California that cert in parties, to me unknown, had commenced a survey of a new boundary line of the Government Reservation at the Presidio of San Francisco, by which the area of said reservation would be diminished by 200 acres; that the new boundary line was being run by a party under the orders of the United States Surveyor General for the State of California; and that the General wished me to call at that office, and request to be informed, for his information, by what authority said line was being surveyed, where was the initial point, and how the direction of the lines was to be determined. I was also informed that the Surveyor General was absent from the city and that Mr. Conway was temporarily in charge in his absence, and that to him I was to apply for the required information.

Under these verbal instructions I called upon Mr. Conway at his office, and was informed by him that he was acting under instructions from the Commissioner of the General Land Office in Washington, and that he could not show me said instructions, as they were in the hands of his deputy who was on the field running the line. During the interview I told Mr. Conway that I had been informed that a party was on the reserve, building a fence on the new line, and I asked him if this was by his order. He answered that he knew nothing about it -- that it was frequently the case that a party of squatters followed the line of a government surveying party -- and that was none of his business and he could not help it. I returned and reported to above, in substance, to the General.

I may add that my visit was made in an official way, and I thought the interview was conducted, by both parties concerned, in an unexceptionable manner; nothing on my part being said or done, by word or manner, that could leave an offensive impression upon Mr. Conway, and his manner to me was similar to mine towards him.

I was then directed to go to the Presidio, and examine into what was actually going on there by the surveying party. As I was about to start, I was directed to call again upon Mr. Conway and ask him the name of the deputy who was in charge of the party running the line. He replied, Mr. Stratton (or some very similar name) which answer I reported to the General.





Presidio southern boundary, cont'd.

I then proceeded to the Presidio, and found there was no surveying party there -- that a fence some hundred yards in length had been built -- that some one had commenced to build a house on the reserve between the old and new lines, and that the old line was marked by a good fence. A party of soldiers was on the ground, stationed there, as I was told, to prevent further work on the survey. I then returned and reported these facts.

I have the honor to be, very respectfully, your  
obedient servant,

R. S. Williamson, Bvt. Lt.-Col., U. S. A.,  
Maj. of Engs.

-oOo-

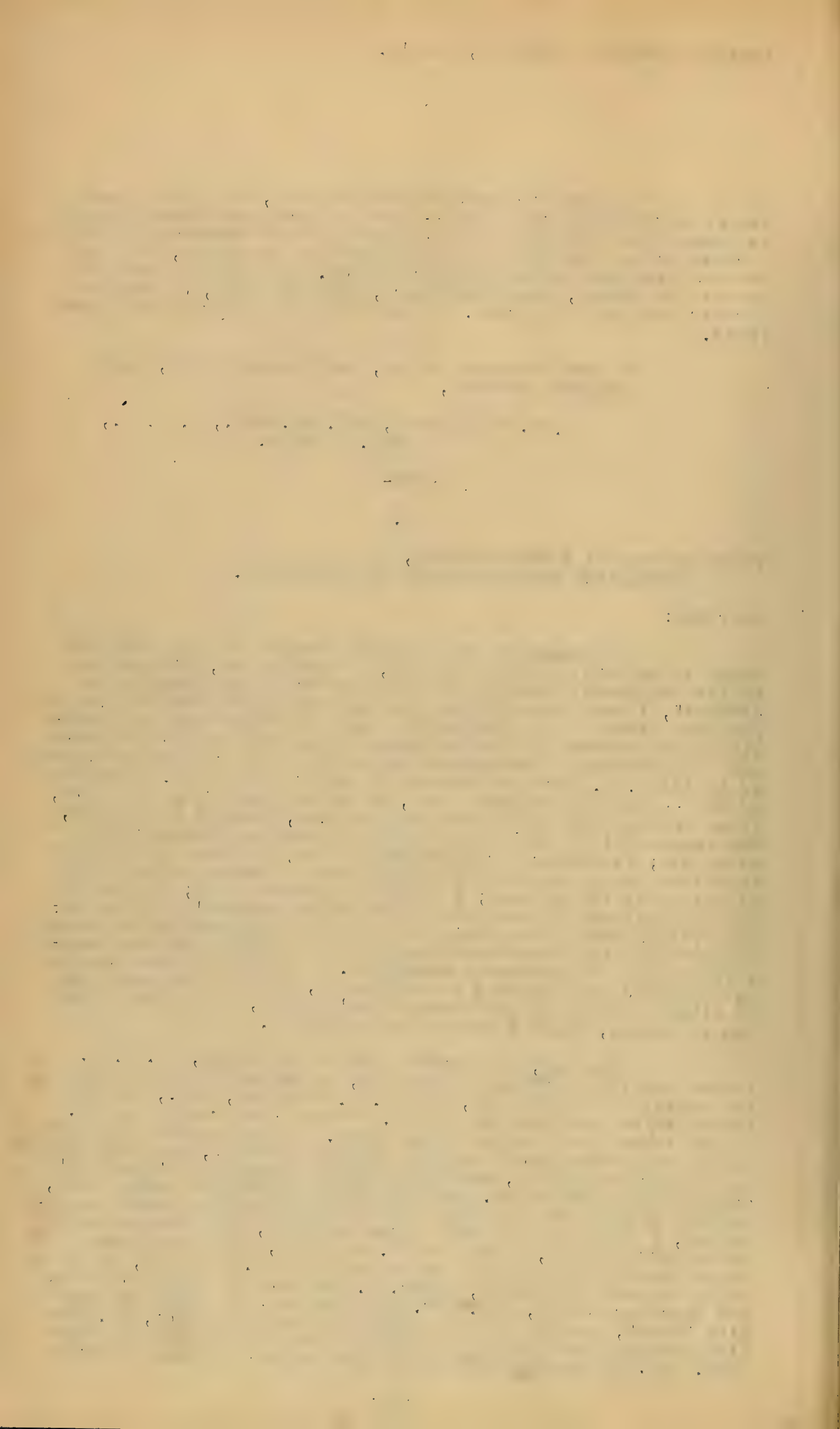
G.

To Major-General Irwin McDowell,  
Commanding the Department of California.

Dear Sir:

In answer to your inquiry whether "I have had anything to do with the surveying of, or fencing in, of a portion of the Government Reserve on which the Presidio Barracks are erected", I most respectfully beg leave to state that within the past few weeks I have frequently heard it stated that the division line between the Pueblo lands of the City of San Francisco and the Government Reservation was about to be run and established by the U. S. Surveyor General by order of the Hon. Secretary of War -- that on Thursday last, on my way home from my office, I met accidentally my friend and neighbor, General Hutchinson, who inquired if I was in the habit of going to Headquarters every day; in answer I replied that I was; he then requested me to oblige him by handing to Colonel Drum a communication which he then held in his hand; I asked the nature of it; he replied that he believed it was from the Surveyor General's office asking Colonel Drum for a detail of men from the Presidio to assist in surveying the Government Reserve and to establish the boundaries thereof by permanent monuments. I took the communication as requested and promised to deliver it, as I did the next day by either placing it on Colonel Drum's table, or handing it to him in person, which I do not now recollect.

One day, the latter part of last week, Mr. I. N. Thorne was in my office on business, in no way connected with the survey of the Reserve, when E. L. Sullivan, Esq., called at my office and inquired for Mr. Thorne -- on seeing him Mr. Thorne asked how he knew he was there. Sullivan said they told me at your office and I want to see you a moment, and they stepped to my door conversing, and while there a man called "Red Mike" came up and spoke to Mr. Sullivan about purchasing some lumber, without knowing or inquiring for what purpose the lumber was required, I asked if it was a large quantity, and when answered in the affirmative, I said to Mr. Sullivan, if he required a large quantity I wished he would buy from Mr. Tichenor, as by so doing he would oblige me, as Mr. T. had done me some favors and had been very civil, etc. Mr. Sullivan said he would and left with "Mike", neither of them coming inside of my room, Mr. Sullivan holding the door in his hand during the entire conversation. Mr. Thorne left my office soon after -- my impression is





this took place on Saturday -- it may have been on Friday. On Monday morning, about half-past 9 o'clock, I was passing out of my office, on my way to the Presidio omnibus when I saw Mr. Thorne in a buggy on Merchant Street; he inquired if I was going out to the Presidio. I answered yes, and that I was going in the bus. Thorne said he was going out there and would take me in his buggy: I accepted his offer, and on the way out Mr. T. inquired if I was acquainted with the commanding officer at Presidio; he asked who he was, I replied Major Allen; he asked me to introduce him to Major Allen, saying that the southern line of the Reserve had been or was about to be run and permanent monuments would be established, and that he was going to ask the commanding officer for a detail of men to assist the Surveyor in fixing the line and monuments. I accordingly introduced him to Major Allen, at his house; the Major being engaged, asked me to go with Mr. T. to the Adjutant, Captain Ramsay, and ask him to make the detail from the cavalry. I then went and introduced Mr. T. to Captain Ramsay, who said a detail of six men (the number asked for by Mr. T.) should be on the hill at 1 o'clock P. M. Mr. T. then left the adjutant's office, and I did not see him again until Tuesday, when I met him at my (Sutler's) store taking lunch; after lunch he said he would like to have an additional detail and requested me, if I saw the Adjutant, to request him to make a detail of six more men; I said if I saw the Adjutant I would, but told him that he had better see the Adjutant himself. Thorne then went immediately in search of him. I soon after saw Captain Ramsay and made the request as Mr. T. had asked me to do, and in a few minutes after Mr. Thorne met me and told me that he had seen the Adjutant and that the detail would be made -- that this was about half-past 1 o'clock P. M., Tuesday, the 27th instant. I did not see Mr. Thorne again until this (Wednesday) morning, when I met him by accident in the street; he then informed me that he understood that General McDowell had stopped the fencing. This is all my knowledge, and all I did or said, in this entire transaction. When I learned from various sources that the southern boundary line of the survey was to be run by the U. S. Surveyor General by instructions from the War Department, I did not doubt for a single moment but that it was to be done with the entire acquiescence and knowledge of General McDowell; had I supposed anything different I certainly would not have been even the bearer of a message or communication to anyone, officially or otherwise, on the subject; for it is not my habit to interfere or meddle with what does not concern or interest me, and in this whole question I have not in any way, directly or indirectly, the least interest, nor do I know who the parties are who are putting up this fence; except that, as I suppose, that Mr. Thorne and Mr. Sullivan have the chief charge of all of which I have learned since the fencing commenced. It is mere supposition as to Mr. Sullivan, for I have never conversed with him on the subject, and my suspicion that he is interested arises entirely from the circumstance of the lumber, heretofore mentioned, and that "Red Mike" had something to do with the lumber and was engaged in putting up the fence on the Reserve, all of which has come to my knowledge since the fence was commenced.

I have the honor to be,

Very respectfully, your most obedient servant,  
J. D. Stevenson,

Sutler at Presidio Barracks.





P. S.--- At the time I introduced Mr. Thorne to Major Allen, he (Thorne) had in his hand a note in pencil, signed Drum, which Thorne showed Major Allen.

J. D. Stevenson.

-oOo-

State of California )  
City and County of )SS.  
San Francisco. )

I. N. Thorne, of the City and County of San Francisco, being duly sworn, deposes and says: That he has read the annexed statement of Colonel J. D. Stevenson, in relation to the building of a fence at the Presidio Reservation. That the same in relation to all statements in which the names of deponent and Mr. Sullivan are mentioned or concerned, is the truth, the whole truth, and nothing but the truth.

Deponent further says: That the building of the fence, therein referred to, was intrusted to deponent by the parties interested therein, and deponent directed the purchasing and cartage of the lumber to the ground to be fenced. That he employed all the men and took the entire control and supervision of the whole matter, and in which Colonel Stevenson was in no way, directly or indirectly, consulted or concerned, neither was he requested to give any directions to any of the men employed by me, neither were any of them directed to call upon him for instructions.

Deponent further says: That in the and before the time of the commencement of the erection of said fence by my directions, Colonel Stevenson was entirely ignorant of the time or place, where and when said fence was to be put, and during the time it was in the course of erection, Colonel Stevenson was not nearer to the place where the fence was being put up than the eastern gate of the Reserve on the Presidio Road.

Subscribed and sworn to before me this 29th day of March, A. D. 1866.

(Notarial seal) I. T. Milliken  
(5 ct. rev. stamp.) Notary Public.

-oOo-

State of California )  
City and County of )SS.  
San Francisco )

Michael Higgins, of the City and County of San Francisco, being duly sworn, deposes and says: That he was employed by Messrs. I. N. Thorne, of said city and county of San Francisco, to put up a fence on the southern side of the Presidio Reservation, and that from him he received all his instructions and from no other person.

Deponent further says: That he never had any instructions from, or conversations with, Colonel Stephenson on the subject of the fence, and that he has never stated to anyone that he had instructions from Colonel Stevenson or that he was directed by any one to call on Colonel Stevenson for instructions in the matter of the erection of the said fence.





Presidio southern boundary, cont'd.

Subscribed and sworn to before me this 29th of March,  
A. D. 1866.  
(Notarial seal.) Henry Haight,  
(5 ct. rev. stamp.) Notary Public.

-oOo-

H.

U. S. Surveyor General's Office:

San Francisco, Cal., May 3, 1866.

General I. McDowell, Commanding  
Military Department.

Sir: In accordance with instructions, I herewith transmit  
for your information a traced copy of the Survey of two Military  
Reservations within the limits of the Pueblo of San Francisco.

These surveys have been executed in accordance with  
the proclamation of the President of the United States and the  
instructions from the Commissioner of the General Land Office.

I enclose a tracing of the certified plat forwarded  
by our department, as a guide in the execution of this work. I  
also forward a copy of the report of J. T. Stratton, Department  
Surveyor, relating thereto.

Very respectfully, your obedient servant,  
L. Upson, U. S. Surveyor General.  
By E. Conway, Chief Clerk.

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I.

U. S. Surveyor General's Office,  
San Francisco, Cal. May 11, 1866.

Sir:

I am in receipt of your communication of 9th in-  
stant, and am preparing the copies of instructions, etc., refer-  
ring to the Military Reservations.

They will be forwarded in a few days.

Very respectfully, your obedient servant,  
E. Conway, Chief Clerk.

General R. C. Drum, Asst. Adj. General, Department of California.

-oOo-

K.

U. S. Surveyor General's Office,  
San Francisco, May 14, 1866.

General R. C. Drum, A. A. G.

Sir: I am in receipt of your communication of 9th in-  
stant, requesting "a copy of the Instructions of the Commissioner  
"of the Land Office, and the Proclamation of the President, ac-





"cording to which you (I) report the Surveys to have been made."

In order that the General Commanding the District may fully understand this subject, I have made an examination of the records of this office, and herein make a condensed report of thereof.

1st. Extract from a letter of the Surveyor General for California to the Commissioner of the General Land Office, dated August 7, 1851.

2nd. Copy of the first proclamation of the President.

3rd. Copy of communication from General Totten, Engineer Department, U. S. Army to Hon. C. M. Conrad, Secretary of War, dated October 23, 1851.

4th. Sketch referred to therein (a certified copy sent May 3, 1866.)

5th. Communication from Hon. C. M. Conrad, Secretary of War, to the President.

6th. Copy of the second proclamation of the President modifying the reservations.

7th. Letter from Colonel C. C. Sibley, dated July 25, 1862, requesting a survey of a line of the reservation.

8th. Copy of a report of the U. S. Surveyor General to the Land Department, dated October 29, 1864.

9th. Copy of extracts from letter of the Commissioner of the General Land Office to the U. S. Surveyor General, requesting maps, etc., dated July 19, 1865.

10th. Copy of Surveyor General's answer thereto, dated September 1, 1865.

11th. Copy of extracts from the final decree of Hon. Stephen J. Field, confirming Puebla (sic) lands and excluding Reservations.

12th. Copy of a letter from J. H. Saunders, City and County Attorney, San Francisco, requesting survey of Puebla (sic) lands.

13th. Copy of letter from U. S. Surveyor General to Major-General Irvin McDowell, dated September 26, 1865.

14th. Copy of answer to same, from Assistant Adjutant General Drum, dated October 3, 1865.

From these documents it would appear that on the 24th of June, 1851, the Surveyor General was notified that the President had reserved certain lands including Reservation No. 1.

On the 7th of August, 1851, the Surveyor General informed the Department of the receipt of this notice and the impossibility to carry out the same without some diagrams or maps.

This communication appears to have been sent by the Commissioner to the War Department, and a modification of Res-





ervation No. 1 was agreed upon.

On the 28th of October, 1851, Brigadier-General Totten, of the Engineering Department in a letter to the Secretary of War, states that the Surveyor-General of California, through the Commissioner of the General Land Office, requires additional instructions to enable him to run the lines proposed for reservations, recommends the modification and accompanies his letter with a diagram a certified copy of which was forwarded to the General Commanding the Department of California, with the letter from this office dated May 3, 1866.

The Secretary of War on the 29th of December, 1851, forwards a copy of General Totten's recommendations for the consideration of the President who adopted the same on the 31st of December, 1851, and ordered the modification and reduction of the former reservation.

Referring to the communication of General Totten I would state my recollection to be that application was made to Captain (now General) Halleck for the sketches alluded to therein; his reply was that he believed they had all been sent to Washington.

The question of survey was postponed from time to time, and, in June, 1864, the Commissioner requested a report on the subject, which was made on the 29th of October, a copy of which is herewith furnished.

Our Department again addressed this Office on the subject under date of July 19, 1865, from the tenor of which it would appear that the Commissioner presumed that these lines had been surveyed.

Subsequently a final decree was had in the U. S. Circuit Court, Hon. S. J. Field presiding, fixing the limits of the Puebla, (sic) but excluding these reservations; and thereafter, on the 16th of June, 1865, the City and County Attorney John H. Saunders, Esq., requested a survey of the Pueblo lands as soon as practicable.

On the 26th of September, 1865, Major-General McDowell was informed that a verbal application relative to the expense of surveying the reservations had been made by an officer under his command, and that as a deputy was to be placed in the field to survey the Pueblo limits, the segregation could be done in connection therewith, without further expense to the United States.

On the 3rd of October, 1866, Assistant Adjutant General Drum acknowledges the receipt of this communication, and states that Major-General McDowell desired to be notified when the lines are being run, which request was complied with by letter from this office dated March 21, 1866.

It will be seen that the Land Department on the 19th of July, 1865, presumed that the surveys in and around the Pueblo, referred to in the report of this office dated October 29, 1864, had been executed; as the Hon. Commissioner calls for a complete connected map showing all the surveys from the Golden Gate and Pacific Ocean to the Bay of San Francisco and the "Buri Buri" Rancho; and in the fifth requisition that it shall show all Government Reservations for military and other public uses.





Presidio southern boundary, cont'd.

In view of the final segregation of the lands of the Pueblo, under the decree of the Hon. S. J. Field, which it was understood had been ratified and confirmed by an Act of Congress, and to comply with instructions from the Department requiring information as to the reservations, the surveys of the same were ordered as the preliminary step necessary to establish the exterior lines of the Pueblo, the reservations being excluded from the confirmation to the city.

The desire of this office has been to carry out the instructions of the Department, in accordance with the data furnished by the War Department, so as to push forward an arduous duty, in which so many intricate questions and such large interests were involved.

In view thereof, instructions were delivered to Deputy Stratton for the execution of the work, and, as before stated, a communication was addressed to the Commanding General informing him of the fact.

Under the same date I am informed that the letter has been referred to the Commanding Officer at Point Jose for his information.

The survey so made was, as stated to Colonel Williamson, to be forwarded to the Department at Washington, together with any lines that the Deputy under his instructions might run for the Military Department.

In the execution of the survey the Deputy appears to have strictly followed the sketch furnished by the War Department, as will be seen by inspection, that the southern line of the first reservation is represented thereon as a dotted line, and the same line of the modified reservation as a red line, but both extend on the same course, viz.: a straight line from a point at the southern extremity of the Lake opposite the centre thereof to or towards the point 800 yards south of Point San Jose.

I have given such explanations as are in possession of the office, and by which our action has been governed, for the proper understanding of this survey, surrounded as it has been by questions foreign to all other reservations, and which have been brought before it from time to time since the 7th of August, 1851.

Very respectfully, your obedient servant,

E. Conway, Chief Clerk.

-oOo-

I.

Surveyor General's Office,  
San Francisco, Cal., 7th August, 1851.

The Hon. J. Butterfield, Cr. of the G. L. O.,  
W. City.

Sir:

I have the honor to acknowledge the receipt of your letter of the 24th June, stating that the President had reserved





certain lands mentioned therein.

This office is not in possession of any maps or diagrams which will enable me to ascertain the tracts intended to be embraced by the 1st, 2nd and 7th reservations.

. . . . .

To enable me to understand the intention of the Executive so as to carry out its views, I am therefore compelled to request that I may be furnished with copies of any diagrams or maps which may be in any of the Departments, showing the limits of the tracts intended to be reserved under the numbers above mentioned.

With great respect, etc.,

Sam. D. King, Sur. Gen'l. Cal.

The President of the United States exempts and reserves from sale for public purposes the following tracts or parcels of land in the State of California:

In the Bay of San Francisco, California.

1st. From a point eight hundred yards south of Point Jose to the southern boundary of the Presidio, along the southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos.

2nd. From the southern boundary of San Solita (sic) bay, a line parallel to the channel of entrance to the Pacific.

3rd. Yerba Buena Island.

4th. Alcatrazes (sic) Island.

5th. Angel Island.

On the Eastern side of the Bay of San Pablo.

6th. Mare Island.

7th. The land on the eastern side of Mare Island Straits, beginning at the high hills between those straits and the city of Benecia, about 2,000 to 2,500 yards from the former, and extending in a line nearly parallel to it, to a point opposite the northern extremity of Mare Island, and thence to the straits, so as to join them at a point about 800 yards north of the northernmost high hills on the eastern side of the straits.

Washington, Nov. 6, 1850.

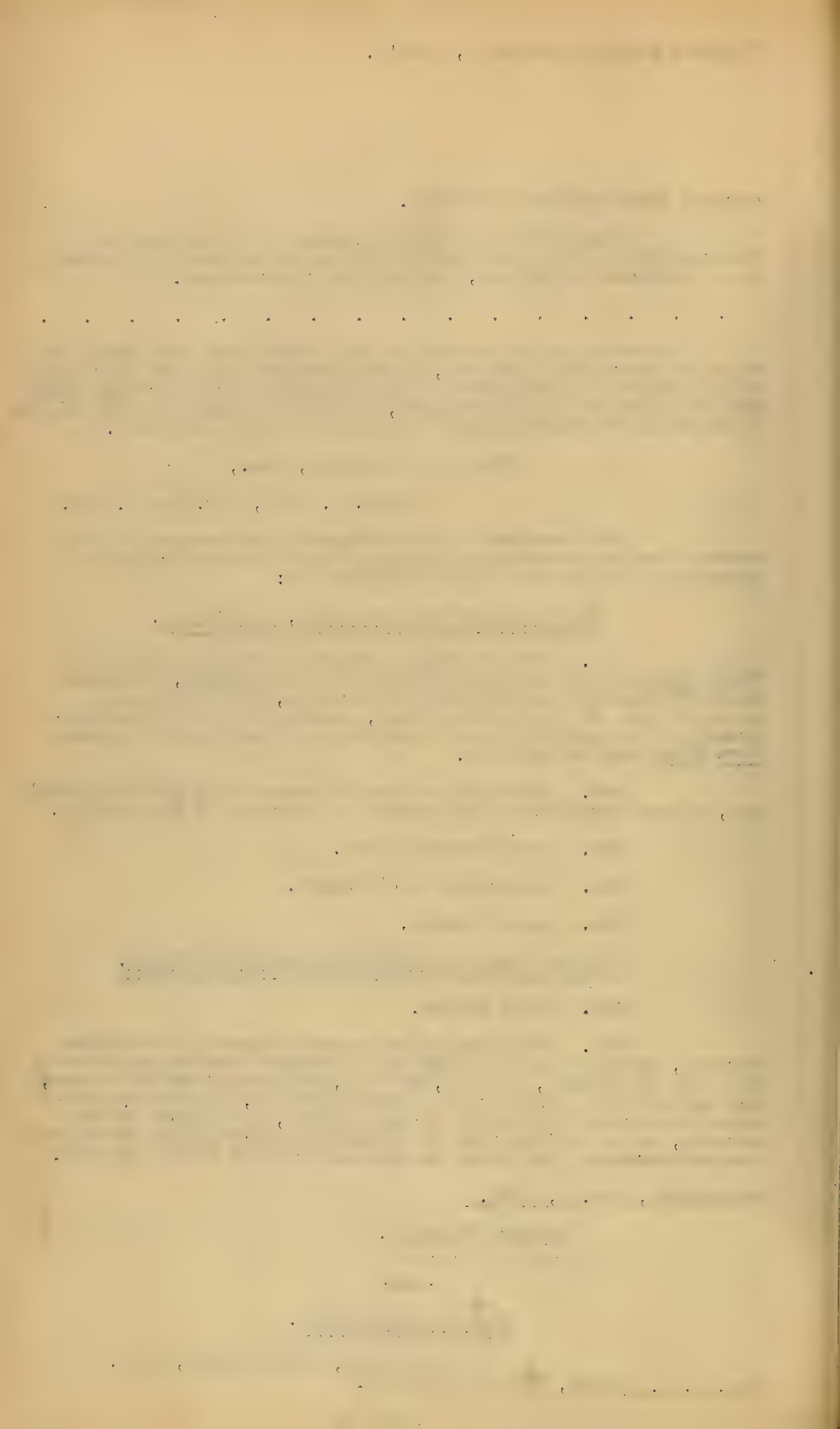
Millard Fillmore.

-oOo-

Engineer Department.

Washington, 28th October, 1851.

Hon. C. M. Conrad, Secretary of War.





Sir:-

The Surveyor General of California having applied through the Commissioner of the General Land Office for some additional instructions to enable him to run the lines of the lands proposed as Government reservations by the Joint Board of Navy and Engineer officers lately in that coast, his application therefor has been referred to this Department. It thus appears that some of these reservations have not yet been surveyed, and on referring the subject above mentioned to the Engineer officers of that Board it would seem desirable to change the limits of one of the reservations from those originally proposed by the Board. This reservation as first recommended, and as directed by the President to be made, was defined as follows:

"From a point 800 yards south of Point Jose to the southern boundary of the Presidio, along that southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos."

Subsequent to this action of the Board, a private claimant to all this tract proposed to the Joint Board, through Captain Halleck, Engineer, to substitute the following bounds for those just mentioned, with the understanding that if accepted by the Government, the claimant would resign all pretension to title with the reservation as thus modified, viz: The Government to reserve promontory of Point Jose within boundaries not less than 800 yards from its northern extremity, and the land north of a line running in a westerly direction from the southeastern corner of the Presidio tract, to the southern extremity of a pond lying between Fort Point and Point Lobos, and north and east of a line passing through the middle of said pond and its outlet to the channel of entrance from the ocean. These two tracts were thought by the Joint Board to be sufficient for the use of the Government instead of the large one before described, and they so stated in writing to Captain Halleck. This Department is of the same opinion, and believing that the interests of the Government would be subserved and complication avoided by making the two separate reservations with the limits as last mentioned, recommends that the reservation be made accordingly.

No plat of the Presidio tract is on file in this office, and it is respectfully suggested that the Surveyor General of California be referred to Captain Halleck, Corps of Engineers, at San Francisco, for sketches which will enable him to run the lines in conformity with the foregoing description.

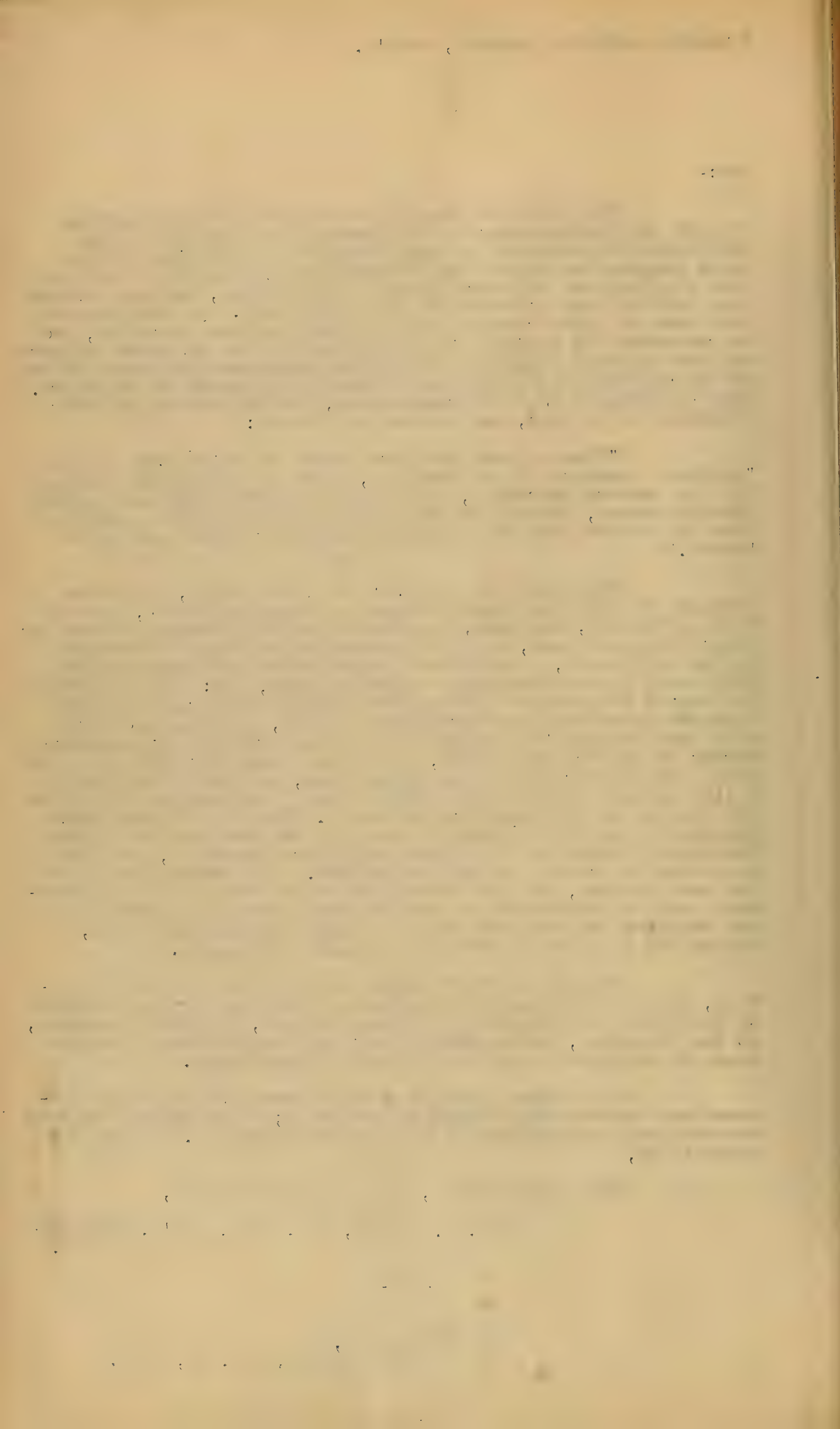
The sketch herewith shows reserve as originally proposed and conjecturally drawn by the Board; also the two separate reservations now proposed to be substituted for it. I have the honor to be,

Very respectfully, your obedient servant,

Jos. G. Totten, Bvt. Brig. Gen'l. of Engineers.

-oOo-

War Department,  
Washington, Dec. 29, 1851.





Presidio southern boundary, cont'd.

Sir:

I have the honor to submit herewith for your consideration the draught of an order modifying and reducing the reservation at Fort Point and Point Jose, San Francisco Harbor, California, prepared in conformity with the recommendation of the Chief Engineer, herewith endorsed, and to request your approval of the same.

Very respectfully, your obedient servant,

C. M. Conrad, Secretary of War.

To the President.

The reservation, including Fort Point, Point Jose and the Presidio, at the entrance of the harbor of San Francisco, California, made by an order dated November 6, 1860, is hereby modified and reduced so as to embrace only the following described tract of land, viz:

1st. The promontory of Point Jose within boundaries not less than eight hundred yards from its northern extremity.

2nd. The Presidio tract and Fort Point, embracing all the land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract, to the southern extremity of a pond lying between Fort Point and Point Lobos, and passing through the middle of said pond and its outlet to the channel of entrance from the ocean.

Millard Fillmore.

Executive Chamber )  
Washington, Dec. 31, 1861. )

-oOo-

Headquarters Presidio S. F. Cal.

July 25, '62.

Col. E. F. Beale, Surveyor General for Cal.,  
San Francisco.

Sir:

There being a question as to the precise boundary of the Presidio reservation on the south side, I have the honor to request that you will deputize some suitable person to run the line, and request him to call on me at this post. I would be glad to have it done to-morrow if practicable. I will remunerate the person for his services.

Please return an answer by bearer.

Very respectfully, your obedient servant,

C. C. Sibley,  
Lieut.-Col. 9th Infantry, Commanding Post.

-oOo-

U. S. Surveyor General's Office,

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Presidio southern boundary, cont'd.

San Francisco, Cal., Oct. 29, 1864.

Sir:

The report which you have requested in relation to the Presidio Reservation has not yet been forwarded to the Department for the following reasons:

The Pueblo claim of the City of San Francisco is now before the U. S. Circuit Court for final adjustment, under an Act of Congress passed during the last session.

We are daily expecting a decision therein, and should it be in favor of the Pueblo its title would be paramount; if unfavorable to the Pueblo, the plat will be finished and forwarded at as early a day as practicable.

Very respectfully, your obedient servant,

L. Upson, U. S. Sur. General.

Hon. J. M. Edmunds,  
Com'r. Gen'l. Land Office, Washington, D. C.

-oOo-

Department of the Interior,  
General Land Office, July 19, 1865.

Sir:

I request that you will cause to be prepared and transmitted to this office as speedily as possible a complete connected map exhibiting:

1st. The City of San Francisco with its corporate limits of 1850, 1851 and all the surveys from the Golden Gate and Pacific Ocean on the north and west to the Bay of San Francisco on the east; thence down in a southerly direction to and including Buri Buri Rancho, showing also the county boundary on the south.

It is desired that the map shall be on the usual township scale.

. . . . .

5th. That it shall show all Government reservations for military and other public uses, with data indicating the date of each reservation, the estimated value of the public improvements on each and all of them.

-oOo-

U. S. Surveyor General's Office,  
San Francisco, Sept. 1, 1865.

Sir:

I am in receipt of your communication of the 19th July last, in which you direct the transmission to your Department of a complete connected map, exhibiting the claim of the City of San Francisco, and of other tracts of land lying in the peninsula on which the city is situated, all of which shall be





Presidio southern boundary, cont'd.

duly attended to as the means for performing the work shall permit.

A considerable portion of the work referred to in your letter depends upon a proper survey and correct delineation of the boundaries of the lands pertaining to the Pueblo of San Francisco, based upon the final decision of the Circuit Court for the Northern District of California, dated May 18, 1865.

By the inclosed copy of a decree of said Circuit Court, dated May 29, 1865, together with the opinion of the Court, it will be perceived that an appeal to the Supreme Court of the United States was denied, thereby rendering the fore-mentioned decision of May 18th final and conclusive.

It is upon this evidence that this office has already ordered a survey of the Pueblo lands in accordance with said final decision in the matter and the provisions of the Act of Congress of July 1, 1864.

The delineation of certain portions of its true boundaries, designated in the confirmation as being the high water mark, offers some difficulties from the fact that a considerable portion of that mark has been totally obliterated by the construction of solid buildings and wharves and other works of super-structure, which render the ascertainment of those lines impossible to actual measurement and observation of the surveyor; however, by the description and maps of surveys performed before the construction of these buildings the high water mark, where it is now obliterated, can be calculated, and the Deputy is now engaged in that work, as a preliminary step to his official survey, which will be commenced in the course of eight or ten days.

This step is one of much importance, for on its accuracy depends the southern boundary, which is to limit the Pueblo claim to four square leagues with certain exceptions.

The southern boundary may affect the interests of various claimants, and for this reason the superficial area of the Pueblo needs to be accurately ascertained.

Much of the other work embraced in your instructions can be prepared in this office from official surveys already executed, but in the matter of reservations and of tracts of land not finally disposed of by the Courts, other measurements and surveys will be required, or an approximation of their limits estimated.

In reference to the claim of Justus Bexler, embracing portions of Sec. 36, T. 2. S. R. 6 W., I would remark that if the boundaries of the Rancho Laguna de la Merced, which is now on appeal before the Supreme Court, be changed in the final decision his claim may possibly conflict therewith, and that until the boundaries are finally established its precise condition cannot be ascertained.

The requirements of the Department referred to in your communication shall be complied with, and the map will be forwarded as soon as the various parts of the labor required can be accomplished.

I have the honor to be,  
Very respectfully, your obedient servant,  
L. Upson, U. S. Sur. Gen'l.

Hon. J. M. Edmunds,  
Com'r. Gen'l. Land Office, Washington, D. C.





CIRCUIT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF CALIFORNIA.

The City of San Francisco,     )  
                                      )  
                  -VS.-            )  
                                      )  
The United States.            )  
                                      )

. . . . .

The land of which the confirmation is made is a tract situated within the County of San Francisco, and embracing so much of the extreme upper portion of the peninsula above ordinary high water mark (as the same existed at the date of the conquest of the country, namely the 7th of July, A. D. 1846) on which the City of San Francisco is situated, as will contain an area of four square leagues, said tract being bounded on the north and east by the bay of San Francisco, on the west by the Pacific Ocean, and on the south by a due east and west line, drawn so as to include the area aforesaid, subject to the following deductions:

Such parcels of land as have been heretofore reserved or dedicated to public uses by the United States.

. . . . .

All of which said excepted parcels of lands are included within the area of four square leagues above mentioned, but are excluded from the confirmation to the city.

-oOo-

Office of the City and County Attorney,  
San Francisco, June 16, 1865.

Hon. Surveyor General of the United States for California.

Dear Sir:-

Please find herewith certified copy of the final decree which I enclose, with the view to as early a survey as the engagements of your office may allow.

With much respect, truly,

John H. Saunders, City and County Attorney.

-oOo-

U. S. Surveyor's Office,  
San Francisco, September 26, 1865.

Sir:

Verbal application having been made by an officer under your command for an estimate of expenses of survey, etc., of the military reservations in the Pueblo lands of San Francisco, I would state that I am now preparing to send a Deputy in the field, under a final decree of the U. S. Circuit Court, to survey





Presidio southern boundary, cont'd.

the exteriors of said Pueblo,

This survey will segregate the above mentioned reservations from the Pueblo lands without cost to the United States.

Very respectfully, your obedient servant,  
Maj.-Gen'l. Irvin McDowell, U. S. Army.

L. Upson, U. S. Sur. Gen'l.

-oOo-

Headquarters Department of California,  
San Francisco, Oct. 3, 1865.

L. Upson, Esq., U. S. Sur. Gen'l., San Francisco, Cal.

Sir:

I have the honor to acknowledge the receipt of your letter of the 29th ult., relative to the estimate of expense for the survey of the military reservation in the Pueblo lands, etc., and to thank you for the information contained therein.

Major General McDowell desires you to let him know when the lines of the lands are to be run so that he can send a competent person to see and mark the exact metes and bounds of military reservation.

Very respectfully, your obedient servant,  
R. C. Drum, A. A. Gen'l.

-oOo-

M.

Headquarters Department of California,  
San Francisco, Cal., May 9, 1866.

E. Conway, Esq., Surveyor General's Office,  
San Francisco, Cal.

Sir:

I am instructed by the General Commanding the Department, to acknowledge the receipt, yesterday, of your letter of the 3rd instant, and am further directed by him to request of you a copy of instructions of the Commissioner of the Land Office, and the proclamation of the President according to which you report the surveys you refer to have been made.

Very respectfully, your obedient servant,

R. C. Drum, A. A. G.

-oOo-

San Francisco, Cal., April 27, 1866.

L. Upson, Esq., U. S. Surveyor General for the State of California.

Sir:

In obedience to your instructions to me, dated Febru-

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1913

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Presidio southern boundary, cont'd.

ary 27, 1866, for the survey of the military reservations in San Francisco County as soon as I had finished the work in hand, on the morning of March 23rd, before commencing the survey, I reported myself to the commanding officer at Point San Jose, Major Bowman, as requested by Colonel Drum.

I intended to have first consulted the commanding general, General McDowell, in relation to the proposed survey, and for that purpose called at his quarters at about 8 A. M., before reporting to Major Bowman, but he had not yet arisen, and I could only leave my name, official position and mission.

With Major Bowman, I held a lengthy consultation and exhibited my instructions, the President's proclamation describing the reservations, and the certified map thereof from the General Land Office, which were to be my guide in the execution of the work, and explained to him, as fully as my then limited knowledge of the localities extended, my proposed plans of survey; and informed him that I had been directed by your chief clerk, Mr. Conway, to run any lines the Military Department might wish in addition to those I might establish under my instructions. The certified map to which I have referred represents the Point San Jose Reservation as being bounded by three right lines on the easterly, southerly and westerly sides, at distances of about 800 yards from the northern extremity of the point, while the written description limits the same boundary to "not less than 800 yards from" the same point.

Under this description there could have been included a margin outside of the 800 yards, had it been deemed necessary for military purposes, and which I suggested could be done, if he, Major Bowman, so desired it; but he answered that his Department did not wish to have included in the reservations any more than the minimum quantity designated in the official descriptions, and directed me to survey for its southerly boundary an arc of a circle 800 yards radius from the extremity of the point, the field notes of which I return to you.

Both the map and the written description clearly represents the Presidio Reservation as being bounded on the south by a straight line from the southern extremity of Mountain Lake, towards a point 800 yards due south of the northern extremity of Point San Jose, and as this line was described thus unmistakably in both documents, I established the southerly boundary of this reservation in accordance therewith, believing that the same rule should be adhered to in this case as in surveying private land claims, viz: to follow strictly all specifically described lines.

As before stated, I began the survey on March 23rd by establishing an initial point in the arc around the Point San Jose reservation.

Major Bowman kindly offered me a detail of men should I need them in my work, but I replied that I would be occupied during the first two or three days in establishing initial points, retracing township lines, etc., and should not want them; and on the 26th, having established the position of the corner monuments of the southern boundary of the Presidio Reservation, I, in person, notified Major Allen, commanding the post, who expressed the same gratification that Major Bowman did, viz: that the lines of the reserves would be at last officially surveyed and settled.

I asked as to the detail of men referred to in the





Presidio southern boundary, cont'd.

communications from the military Department to your office, and whom I presumed from my instructions were to be furnished for the purpose of placing more conspicuous monuments on the lines between the corners and whom I supposed would have orders, or an officer to direct them what to do, upon my showing the lines.

Soon after our interview, on going upon the ground, I found the men together with several citizens, and lumber on wagons at different points.

The correct line of the reservation, as I had established it, was then pointed out by me, after which I proceeded with my surveying duties.

On the 28th, I again went to the Point San Jose Reservation for the purpose of completing the survey of the proposed arc for the southern boundary, but Major Bowamn requested me to defer it a few days, as in consequence of some changes that were being made in the disposition of the garrison, he would not be able to attend to it.

About two weeks afterward I completed the work, and now hold myself in readiness to show the military Department the boundaries whenever they may desire to know them.

I also return to you the field notes of the swamp and tide lands within the Presidio Reservation as segregated by the ~~State~~ agent, the county surveyor of San Francisco County, and claimed by purchasers of title from the State, who have requested me to attach them to my survey of the reservations as an exhibit.

This land is of the same general character as the other marsh and tide lands along the ocean and around the bay of San Francisco, and are mostly overflowed at ordinary high tide.

Very respectfully,

James T. Stratton, U. S. Deputy  
Surveyor.

-oOo-

I received no card, or message from Mr. Stratton, nor information of him, except through the commanding officer of Point San Jose, whom I directed to furnish him with the proper assistance, and to mark, with posts, the lines he should run.

Irvin McDowell, M. G.

-oOo-

San Francisco, March 27, 1866.

Major Allen, Commanding Presidio.

Sir:

The Department Commander directs that you will make full report, in the morning, to Headquarters respecting the intrusions upon the Government Reserve, about which I spoke to you this afternoon, and that in the meantime you will allow no further erection of fences, or any other trespass upon the military re-





Presidio southern boundary, cont'd.

serve of the Presidio within its present established boundaries.

Very respectfully, your obedient servant (sic),

Jas. T. Hoyt, Captain & A. Q. M.

-oOo-

Pacific, Headquarters Military Division of the  
San Francisco, Cal., October 13, 1866.

Adjutant General of the Army,  
Washington, D. C.

General:

I return herewith your letter of June 2, 1866, in regard to Mr. Brook's survey of the Presidio Reserve in 1862, with indorsements with the original map of Mr. Brook's Survey, and letters of Mr. Brooks, former Deputy Surveyor, and of Mr. Conway, Chief Clerk, U. S. Surveyor General's Office, and of Major General McDowell.

The point of commencement of Mr. Brook's survey was the one established in the early part of 1850, by the joint Board of Army and Navy officers, as the "south-east" corner of the "Presidio Reservation". The original papers and correspondence, in regard to the restriction of the boundaries of the "reservation" at that time, ought to be found on file in Washington. The copies here are mostly unauthenticated and unofficial.

General McDowell has been absent most of the time since the date of his letter, July 26, 1866. It is possible that a further search in the various offices here may throw more light upon the matter; if so I will make a further report hereafter.

Very respectfully, your obedient servant,

H. W. Halleck, Major General, Commanding.

Headquarters Department of California,  
San Francisco, Cal., July 25, 1866.

Lieut-Col. R. N. Scott, Assistant Adjutant General,  
Headqrs. Mil. Div. of the Pacific, San Francisco, Cal.

Sir:

I return herewith Assistant Adjutant General Nichol's letter of June 2nd requesting that the Military Records of the Pacific be searched, to ascertain what disposition has been made of the survey of the Presidio Military Reservation west of the City of San Francisco, Cal., also for any information that may be obtained respecting said reservation, stating that the reservation was surveyed in 1862 by J. R. Brooks, U. S. Deputy Surveyor, under instructions from the Surveyor General of California, at the request of Colonel C. C. Sibley, U. S. Army.

I enclose a copy of the survey made as above indi-

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Presidio southern boundary, cont'd.

cated, and of Mr. Brooks letter of July 16th, and one from Mr. Conway, Chief Clerk of the Surveyor General's office of July 10th.

These letters were in answer to notes of inquiry addressed them, , respectively on the subject of the survey.

The map -- as will be seen from Major Allen's indorsement on Assistant Adjutant General Nichols' letter, herewith -- was taken from the office of the headquarters of the post of Presidio.

I have seen Mr. Brooks who says, this is the map of the survey, with the notes as made by him in 1862, and ~~was~~, he says, satisfactory to the then Surveyor General, who told him to give it to Colonel Sibley at whose request it was made.

It will be seen Mr. Conway throws discredit on this survey, and says that Colonel Sibley had declined having a complete survey made, etc. You will observe, however, that he also says Colonel Sibley's application was "to run the boundary ~~on~~ the south side."

If you will refer to the President's order making the reservation, you will see that the southern boundary is the only one mentioned therein. The order says the reservation shall be all "north" of that line. In asking therefore for the southern line to be run, Colonel Sibley asked for all that was necessary -- all that in fact has been done since, so far as the limits of the reservation are concerned -- by Messrs. Conway and Stratton in the survey recently made by them.

In connection with this subject of the Presidio reservation, I beg to refer to my letter of June 9th, 1866, and the accompanying papers on the subject of the recent survey made of it by Messrs. Conway and Stratton of the Surveyor General's Office.

The General commanding the Division -- better than anyone -- is acquainted with the circumstances attending the establishing of the initial point of the south-west corner of the Reserve, designated by the order of the President. The position of this point is the only question involved in this case.

I have the honor to be, very respectfully,  
Your most obedient servant,  
Irvin McDowell,  
Major General, Commanding Department.

-oOo-

U. S. Surveyor General's Office,  
San Francisco, Cal., July 10, 1866.

General R. C. Drum, San Francisco, Cal.

Sir:

I am in receipt of your communication requesting information as to what action, if any, was held on the application of Colonel Sibley, in 1862, for a survey of the Presidio Military Reservation, west of the City of San Francisco.

I have to reply that no application has been filed





Presidio southern boundary, cont'd.

in this office from the Military Department, under date of 1862, requesting the survey of the Presidio Military Reservation, west of the City of San Francisco.

Under date of July 25, 1862, Colonel Sibley, commanding the post at the Presidio, requested Surveyor General Beale to deputize some suitable person to run the boundary on the south side, as there was some question as to the precise boundary.

Mr. T. R. Brooks, I think, was the bearer of the letter from the colonel, and it was understood by this office that the line referred to was the Lobos Creek line.

Surveyor General Beale consented, as a matter of courtesy to Colonel Sibley, to authorize Mr. Brooks, who proceeded to run some lines, and returned the field notes and a sketch, which, upon examination, were found to be incomplete.

Mr. Brooks assumed a starting point as correct, but gave no reasons to enable this office to judge whether or not the instructions had been complied with.

The office, therefore, took no official action on the return, but delivered the sketch to Mr. Brooks to be filed with Colonel Sibley, who had declined having a complete survey made.

The sketch was forwarded to Washington by the late General Wright.

The above is my present recollection of matters connected with the Brooks' survey.

Very respectfully, your obedient servant,

E. Conway,  
Chief Clerk.

-oOo-

San Francisco, July 16, 1866.

Bvt. Lt.-Col. Wm. Neil Dennison, U. S. A., A. D. C.

Sir:

In reply to your communication of the 14th instant, I have the honor to state:

1st: I did make a survey of the southern boundary line of the Presidio Military Reservation from the eastern boundary of the same, to and across "Mountain Lade" to the mouth of the tunnel, on the 30th day of July, 1862.

2nd: The survey was made by direction of Edward F. Beale, then U. S. Surveyor General for the State of California.

3rd: At the time the survey was made I was Deputy U. S. Surveyor General.

4th: I did file in the office of the U. S. Surveyor General a copy of the map of the survey, with the date, and as

100



Presidio southern boundary, cont'd.

soon after the survey was completed as the map could be prepared.

5th: The map shown me on Saturday was the same one I filed as above.

I have the honor to be,  
Very respectfully, your obedient servant,  
Thaddeus R. Brooks,  
Civil Engineer.

Headquarters Department of California,  
San Francisco, Cal., November 12, 1868.

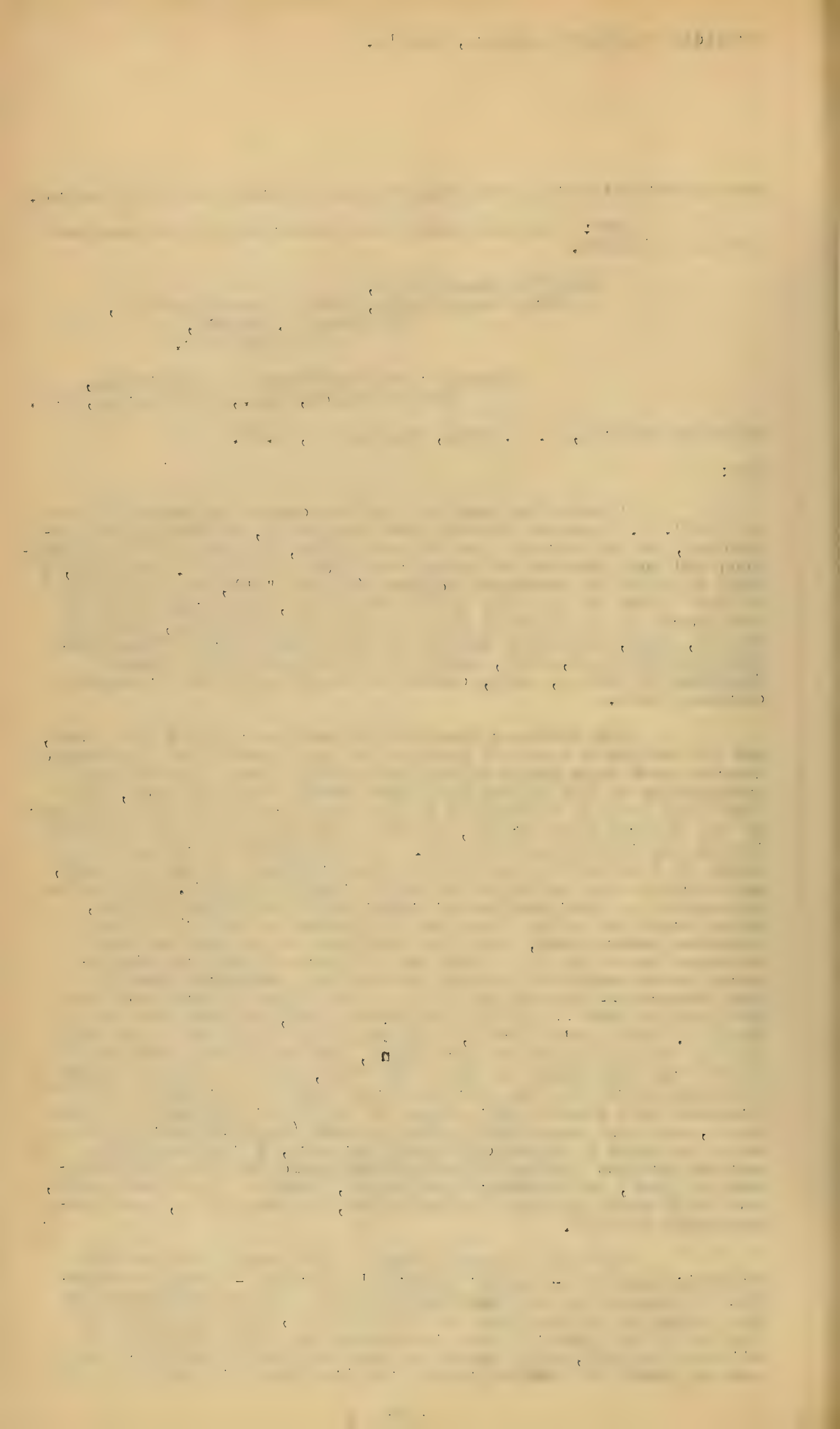
Adjutant General, U. S. Army, Washington, D. C.

Sir:

I have the honor to inclose copy of a letter from me to the U. S. Surveyor General for California, objecting and protesting, on the part of the United States, against the final adoption and confirmation of the survey made by James T. Stratton, a plat of which is herewith inclosed (marked "A"), of the Pueblo or city lands of the City of San Francisco, confirmed to it by the decree of the Circuit Court of the United States, entered May 18, 1865, and which decree was affirmed by Act of Congress approved March 18, 1866, under the provisions of the law of Congress of July 1, 1864, ceding to the City of San Francisco certain lands.

The Surveyor General has had a survey and plat made, and he considers that all parties who may have rights prejudiced thereby must make their objections within ninety days of the publication of the notice that such survey has been made, and have them sent to Washington to be considered by the Commissioner of the General Land Office, so that when the patent comes to be issued due justice may be done. It is believed here that the issue of a patent to the City of San Francisco of all the land, save such as may be marked on the survey of James T. Stratton as belonging to other parties or reserved to the United States, would wrest the title from the Government of a part of the Presidio Reservation, and give that part to private parties claiming under the city title as the part of the Presidio Reserve which would be included between the southerly line of that Reserve -- as defined by the Joint Board of Army and Navy officers in 1850 -- and the southerly line, as laid down by James T. Stratton's survey, lies along the slope of a high hill facing the bay shore and Fort Point, and commanding that whole shore from that point to Point San Jose, and as this land also includes nearly all the springs from which the troops at the Presidio have drawn their supply of water for the last eighteen years, and this land which would be lost (some 180 acres) is worth at least a thousand dollars per acre, I recommend an earnest protest against a survey that would deprive the Government of land, so necessary and useful, which it has always held, and which existing laws and decisions, if adhered to, would undoubtedly give it.

The land claimed outside the eastern line of the Presidio Reserve -- as per Stratton's survey -- though undoubtedly belonging to the Government has not been in possession of the troops since the issue of a Post Order, shortly after the limits of that Reserve were recommended by the Joint board of officers in 1850, which Board it will be seen recommended the eastern limit of the Reserve to run from the north eastern





Presidio southern boundary cont'd.

(sic south?) corner -- where the cannon was planted -- to the bay shore, on a line parallel to Larkin Street.

This last named line has been held by the Government, and private claimants have used to space to the east of it, nor is this land so used of such importance, in my opinion, as to make it necessary to remove the present occupants -- some positive action, however, should be taken fixing the limits on the land front of this Reserve beyond doubt or future cavil.

I am sir,

Very respectfully, your obedient servant,

E. O. C. Ord,

Brig. & Bvt. Maj.-Gen., U. S. A., Commanding.

-oOo-

Headquarters Department of California,  
San Francisco, Cal.,  
November 5, 1868.

Honorable Shuman (sic) Day,  
United States Surveyor General,  
State of California.

Sir:

I have the honor to return (marked "A") the inclosed tracing of a survey of the Pueblo, or town lands, of San Francisco, California, as confirmed by an Act of Congress, March 8, 1866, which survey was made under instructions of the U. S. Surveyor General by James T. Stratton, Deputy Surveyor, in the years 1867 and 1868, and which tracing was received from your office on the 30th ultimo.

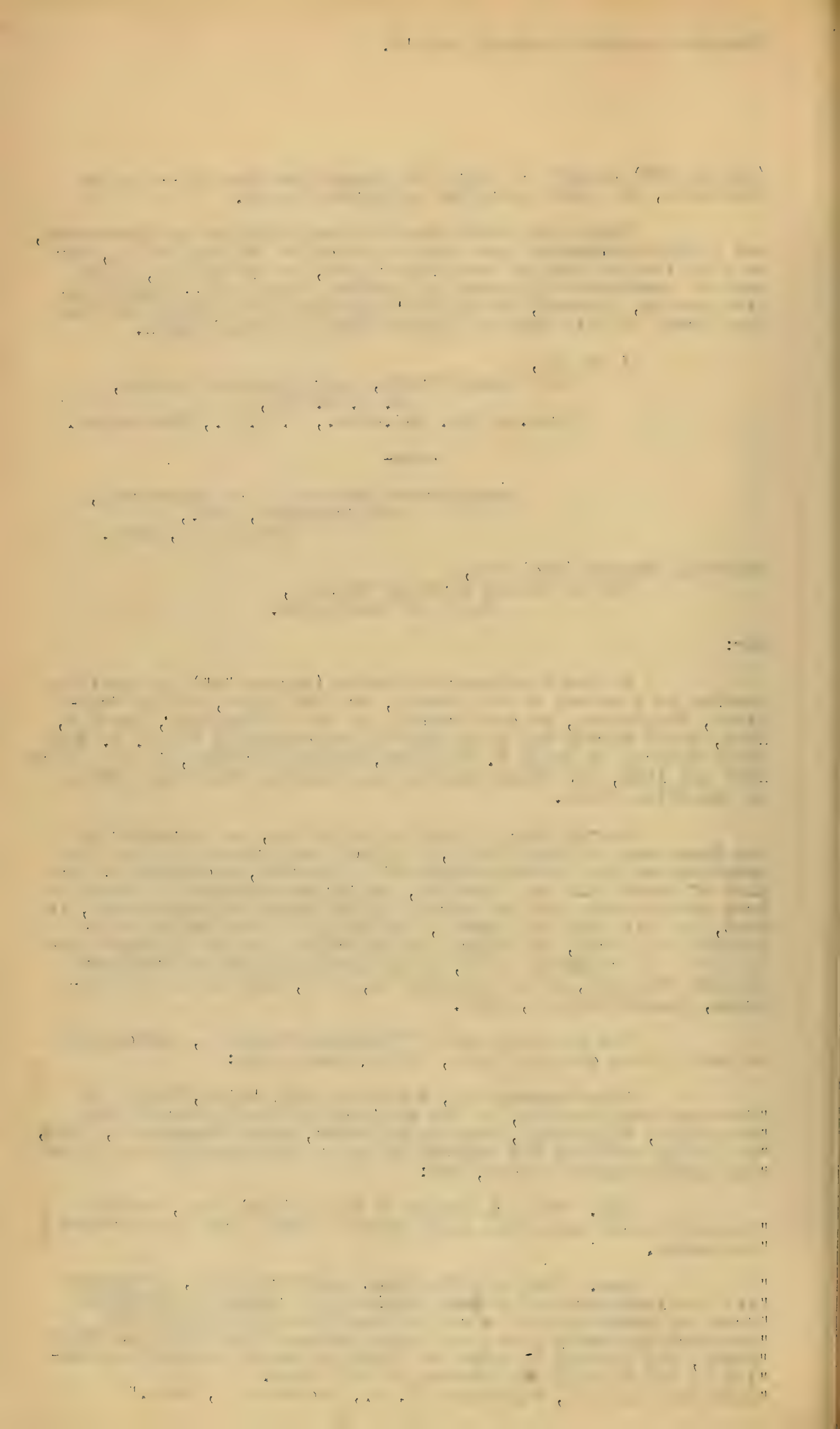
On the part of the United States, as commander of the Department of California, I object and protest against the adoption and final confirmation of the survey, according to the plat of which this is a tracing, as far as concerns its being a true and correct plat and survey of the Presidio Reservation, in that, by this plat and survey, the United States would be deprived of a large, necessary and important part of the lands intended to be reserved to it, by the proclamation of President Millard Fillmore, dated December 31, 1851, and the law of Congress, passed March 8, 1866.

The proclamation of President Fillmore, dedicating to public uses certain lands, is in these words:

"The Reservation, including Fort Point, Point San Jose and the Presidio, at the entrance of the Harbor of San Francisco, California, made by an order, dated November 6, 1850, is hereby modified and reduced so as to embrace only the following described two tracts, viz:

1st. The promontory of Point (San) Jose, within boundaries not less than eight hundred yards from its northern extremity.

2nd. The Presidio tract and Fort Point, embracing all the land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and passing through the middle of said pond and its outlet to the channel of entrance to the ocean.  
"Executive Mansion, Washington D. C., December 31, 1851."





Presidio southern boundary, cont'd.

By which it is seen that the Presidio Reservation depends upon a line from the south-eastern corner of the Presidio tract to the southern extremity of a pond (called Mount ain Lake) as the pond is well known, and located (though improperly) on the survey of James T. Stratton (to which I, on the part of the United States, object) it remains but to locate the south-eastern corner of the Presidio tract; and as the President's proclamation was issued on the recommendation of the Chief Engineer, inclosed to him a few days before its issue by the Secretary of War, we must refer to the Secretaay (sic) of War's letter and the Chief Engineer's recommendation.

The letter of the Secretary of War is in these words:

"War Department,  
"Washington, December 20, 1851.

"Sir:

"I have the honor to submit herewith for your consideration the draught of an order modifying and reducing the Reservation at Fort Point and Point (San) Jose, San Francisco Harbor, California, prepared in conformity with the recommendation of the Chief Engineer, herewith enclosed, and to request your approval of the same.

"Very respectfully, your obedient servant,  
C. M. Conrad,  
Secretary of War."

"To the President."

The Chief Engineer's recommendation, referred to in letter to the President, is as follows:

"Engineer Department,  
"Washington, 28th October, 1851.

"Sir:

"The Surveyor General of California having applied, through the General Land Office, for some additional instructions, to enable him to run the lines of the lands proposed as Government reservations by the Joint Board of Navy and Engineer officers, lately on that coast, his application therefor has been referred to this Department.

"It thus appears that some of these reservations have not yet been surveyed, and on referring the subject above mentioned to the Engineer Officers of the Board, it would seem desirable to change the limits of one of the reservations from those originally proposed by the Board.

"This reservation, as first recommended, and as directed by the President to be made, was defined as follows:

"From a point eight hundred yards south of Point (San) Jose to the southern boundary of the Presidio, along that southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos."

Subsequent to this action of the Board a private





claimant to all this tract proposed to the Joint Board through Captain Halleck, Engineer, to substitute the following bounds for those just mentioned, with the understanding that if adopted by the Government the claimant would resign all pretension to title within the reservation as thus modified, viz: The Government to reserve the promontory of Point San Jose, within boundaries not less than eight hundred yards from its northern extremity and the land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and north and east of a line passing through the middle of said pond and its outlet to the channel of entrance from the ocean.

These two tracts were thought by the Joint Board to be sufficient for the Government, instead of the large one before described, and they were so stated in writing by Captain Halleck.

This Department is of the same opinion, and believing that the interests of the Government would be subserved, and complication avoided, by making the two separate reservations, with the limits as last mentioned, recommends that the reservations be made accordingly.

"No plat of the Presidio tract is on file in this office, and it is respectfully suggested that the Surveyor General of California be referred to Captain Halleck, Corps of Engineers, at San Francisco, for sketches which will enable him to run the lines in conformity with the foregoing description."

"The sketch herewith shows the reserve as originally proposed and conjecturally drawn by the Board, also the two separate reservations now proposed to be substituted for it."

"I have the honor to be,

"Very respectfully, your obedient servant,

"Jos. G. Totten,

"Bvt. Brig.-Gen. Engrs.

"Hon. C. M. Conrad, Secretary of War."

This states distinctly that "no plat is on file in this office of the Presidio tract, and it is respectfully suggested that the Surveyor General be referred to Captain Halleck, Corps of Engineers, at San Francisco, for sketches which will enable him to run the lines in conformity with the foregoing description," which description is nearly in accordance with the recommendation of the Joint Board, as stated in writing to Captain Halleck.

At the south-eastern extremity of the Presidio tract is still the basis of the boundaries, and is not yet fixed by the recommendation of the Chief Engineer, we must refer to the description of the Joint Board on which that recommendation is based. I inclose (marked "B") a copy certified to by General Halleck, of the description by the joint Board of Army and Navy Officers, of the boundaries of the Reserve, in which it will be seen that the initial point of the boundaries is still the same southeastern corner of the Presidio tract, and they, to make its position secure, had it marked by planting a cannon on the crest of a high hill. To fix the spot where the cannon was (it having been removed), I called on the officer who was present and

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Presidio southern boundary, cont'd.

aided in planting it, Captain E. D. Keyes, U. S. Army, and also Milo Hoadly, then Deputy Surveyor of the City and County of San Francisco, who testify to the spot on which the cannon was planted to mark the south-eastern corner of the Presidio tract. Their affidavits# (herewith enclosed and marked "B"), and the well known fact that the line running westerly from the place where the cannon stood has been in the undisturbed possession of the military forces at the Presidio since the cannon was planted -- and that, until the survey of James T. Stratton, no other line has been considered the southern limit of the survey -- establishes the claim of the Government to all the land included north of it.

The plan and survey of James T. Stratton of the southern boundary of the Presidio Reservation comes, I learn, from

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#Note.-- Affidavits of E. D. Keyes and Milo Hoadly were forwarded to the U. S. Surveyor General for California, November 5, 1868; but by letter from his office of December 17, 1878, it appears that after diligent search he is unable to find them now among his records.  
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a diagram on file in the General Land Office, a copy of which is enclosed (marked "D"), but by it the south-eastern corner of the Presidio is laid down and marked as suppositious, and the eastern border of the Presidio is laid down as running due north, so that this diagram is adhered to in the survey of James T. Stratton, to which I object -- in its suppositious point where it was to the interest of outside claimants to do so, but where it was their interest not to adhere to it -- i.e., in running the eastern border of the Presidio -- the diagram from the General Land Office was ignored by J. T. Stratton. This diagram is presumed to be taken from the sketch sent by the Secretary of War and Chief Engineer to the President, with his (the Chief Engineer's) letter of October 28, 1851, but the Chief Engineer is careful to say that this sketch is "conjecturally drawn by the Board", recommending in the same letter that the Surveyor General of California be referred to Captain Halleck, Corps of Engineers, for sketches which would enable him (the Surveyor General of the State) to run the lines in conformity with the description given in his recommendation, and adopted by President in his proclamation.

This recommendation of a survey to accord with the description given, and repeated in the proclamation, seems never to have been acted on, though a survey was made by G. R. Brooks, in 1862, and filed in the Surveyor General's Office, of the southern boundary line of the Reserve, which survey started that line from the point where the cannon was planted, and a copy of which is appended to the survey (marked "C"). Yet the late Surveyor General seems to have preferred to run the lines, as per Stratton's survey, in accordance with a suppositious point on a conjectural sketch, and in violation of the spirit and letter of the President's proclamation. I have had a correct survey made of the southern line of the Presidio Reservation by an officer of the United States Engineers -- Lieutenant Wheeler -- who makes oath that he started that line from a point, designated to him by E. D. Keyes as the point, where the cannon was planted and marked the spot selected as the south-eastern corner of the Presidio Reservation, by the Board of Army and Navy Officers (and which I have shown was formally confirmed by the President's proclamation), and the point shown to him by Milo Hoadly,

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION  
PUBLISHED WEEKLY  
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Presidio southern boundary, cont'd.

Deputy Surveyor of the City and County, at the time.

Lieutenant Wheeler's survey is herewith inclosed (and marked "C"), and appended to it is a survey of the same southerly line by G. R. Brooks. They both show that the United States would be deprived of a large, valuable, and, for the defense of the city, important part of the Reserve, as fixed by the President, if the southern and eastern lines of James T. Stratton's survey of the Presidio Reserve were confirmed.

I am, sir, respectfully,

Your obedient servant,

E. O. C. Ord,  
Brig. & Bvt. Maj.-Gen., U. S. Army.

-oOo-

Wording used by Board of Army Engineer and Navy Officers in reporting upon the site selected for a military reservation at the Presidio of San Francisco, California.

Beginning at a point on the crest of the high hill, south-east of the Presidio and marked by a cannon which was established in the presence of Captain E. D. Keyes and Lieutenant I. H. Lundrum, U. S. A., on the 17th May, eighteen hundred and fifty; thence running in a northerly direction parallel to Larkin Street, in the town of San Francisco, to low water mark on the southern shore of the Bay of San Francisco; thence along the low water line of said bay and of the sea to the mouth of the outlet of the pond between Battery Point and Point Lobos and the south-west of the said Presidio; thence along the middle of said outlet and pond to the southern extremity of said pond; thence in a north-easterly (sic) to the beginning.

-oOo-

Headquarters Department of California,  
San Francisco, December 15, 1869.

Brevet Major-General E. D. Townsend,  
Assistant Adjutant General, Washington.

Sir:

The inclosed opinion of the U. S. Surveyor General, referring to the south and east limits of Presidio Reserve, he accords with my view that they require a re-survey to make them agree with the Proclamation of the President. When I made my protest against Survey of the Pueblo lands, I did not observe that by it the lines of the Presidio Reserve excluded from the Reserve, as swamp land, bought from the State of California, a large piece of land, between the upland and the bay, and excluded from both the Presidio and partly San Jose Reserves, all the water front below what appears to be the high tide line, as the water front has also been partially sold by the state, based on a decision of the Supreme Court -- see Pollard Lessees vs. Hagen et als., Howard III, which makes the state sovereign and gives





it eminent domain and ownership of tide and overflowed lands to the channel. As all the water fronts of San Francisco and several other cities are held, by nature of this decision, and as the U. S. Presidio Reserve was so proclaimed by the President to include only the land north of a certain line and the Point San Jose Reserve, only the promontory, within certain limits -- the right of the State to the water front in both cases may be sustained before the proper courts at any rate. The State is selling it, and if some further proclamation by the President, or cession of the State, to cover such water fronts, is not made for the benefit of the United States, all the water fronts of the Reserves worth selling will be sold, and the citizens will build wharves and store-houses along such water front as far as they please. Section 5, Act of Congress, approved July 1, 1864, authorizes further Reserves to be made by the President of the lands within San Francisco County, but limits the time to a year after the rendition of a certain plat of the lands of this city.

I respectfully suggest that such further Reserves as may be needed be asked for, according to the Act of Congress above quoted; the only lands reserved from the city were the lands which had been or were at the time occupied by the United States as Yerba Buena -- the Farralones, (sic) Mission Rock and part of Angel Island, were not and had not been occupied at that time -- they can under the law of Congress only be reserved -- within a year from the rendition of a certain plan -- see colonial history of San Francisco by Dwinelle.

In this connection, I may call attention to the results which would obtain in case the decision -- Pollard's lessees vs. Hagan et als. -- is made to apply to military or naval Reserves, wherein only the land is specifically reserved and the water front necessary to make such Reserve of any use -- by it a State such as Georgia or Texas could sell all the water front around every such navy yard or fort to citizens who would have a right to build thereon, and fence in such yard or fort; and no U. S. military officer would dare to interfere with them so long as the decision is law.

Very respectfully,

E. O. C. Ord,  
Bvt. Major & Brig. Gen., Commanding Department

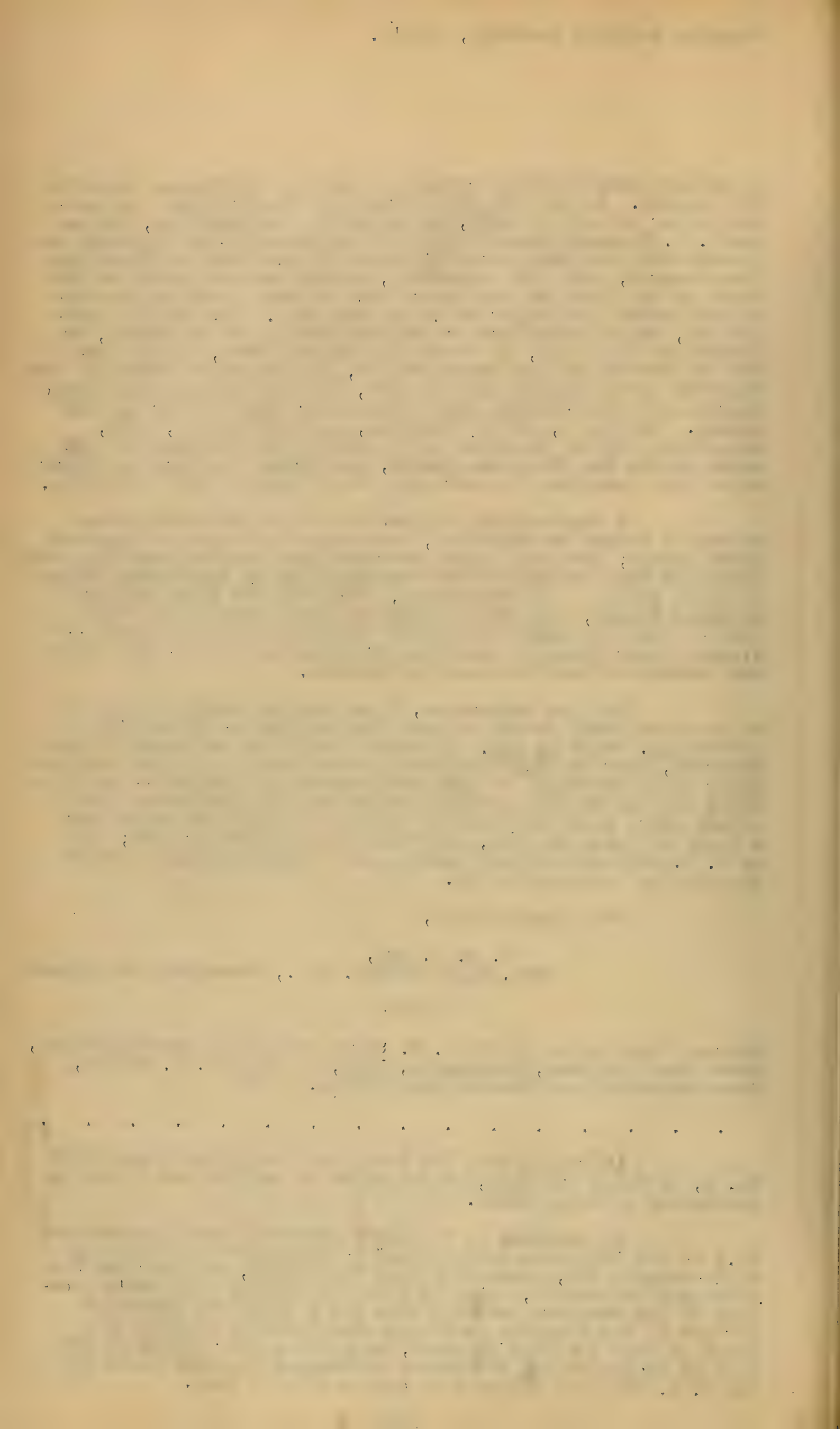
-oOo-

Extract from letter of the U. S. Surveyor General for California, dated San Francisco, December 8, 1869, to Hon Jos. S. Wilson, Commissioner of the General Land Office.

. . . . .

In relation to the location of military Reservation No. 2, at Point San Jose, no objection is on file and it may be considered as established.

In relation to the location of Military Reservation No. 1 -- the "Presidio Reservation" -- exceptions are filed by Major-General Ord, commanding this Department, with various diagrams and affidavits, going to show that Deputy Stratton's location of the southern boundary cuts off a large and important portion of the Presidio as it has been formerly located by a board of Army and Navy Officers, and it has been fenced in and held in exclusive and continuous possession for many years by the U. S. Military officers in charge of this post.





There is also a curtailment by Stratton's survey of a portion on the eastern boundary from the area as located by Captain Keyes, and other officers, in 1850, when they planted a cannon on the south-eastern corner.

Diagrams in Exhibit "A", filed with General Ord's protest, shows (sic) the discrepancy between the two surveys.

In company with Major-General Ord I have lately visited the ground. On Stratton's eastern boundary is a board fence, which has for some years marked the eastern line of possession by the military authorities. This fence is parallel with Larkin Street, and is along the line of a street of the city. At the southern end of this fence is a stone monument marking the point at which Captain Keyes planted the cannon, which cannon is supposed to have been removed by the Vigilant Committee in 1856. This cannon is on an eminence which commands a large portion of the Presidio to the north and west. From the stone monument an old picket fence, erected by the military authorities, extends to the southern side of a pond known as the Mountain Lake, and from the end of this fence, on the southern edge of the lake and thence down its outlet to the ocean, Major-General Ord considers as the western boundary, and allows no settlers within those boundaries except such as are under the control of the Military Department of the United States. Along Deputy Stratton's southern boundary there is no fence, nor has there been one. Deputy Stratton informs me by letter that the distance from his south-eastern corner to the corner formerly marked by the cannon, and now by a stone monument, is chains 19.02, measured along the existing fence.

An important objection urged by General Ord to Stratton's southern boundary is that it excludes several springs of water lying along north of the ridge along which the picket fence is laid, and that these springs are absolutely necessary for the use of the garrison and should be under its exclusive control.

Deputy Stratton's survey is evidently based upon the fact that in the sketch transmitted with the President's order to set apart these Reservations, the southern boundary of the Presidio Reservation appears to be a tangent to the circular boundary of the Point San Jose Reservation, drawn through the southern boundary of the Mountain Lake. It is to be noted, concerning this sketch, that General Totten, in transmitting it to the Secretary of War, speaks of it only as "conjectural", and also that it contains neither courses nor distances, that in the verbal description nothing is said about the southern boundary being tangent to the Point San Jose circle; and, although, upon the sketch an eastern boundary is marked for the Presidio Reservation, yet, with the sketch alone to guide him, it would be very difficult for a surveyor to determine at what point on his tangent he should start his eastern boundary. The sketch is too small and the scale on it too imperfect for any such accuracy of location as is demanded in surveying the streets of a populous city; and it seems plain to my mind that the sketch is to be held subordinate to the call in the President's order for "a line running in a westerly direction from the south-eastern corner of the Presidio tract to the southern extremity of a pond", etc. (See printed copies attached to Stratton's deposition.) In the President's first order on the 24th of June, 1851, he speaks of "the southern boundary of the Presidio", and General Totten, in his communication to the Secretary of War, on the 28th of October, 1851, speaks of the "south-eastern corner of the Presidio tract." All these expressions evidently point to the south-east corner of the Presidio as a point already well known and established, as it plainly had been by the planting of the cannon by





Captain Keyes and others, and by the confirmation of the Board of Army and Navy officers. I think, therefore, that the official plat is in this particular erroneous, and that this tract should be re-surveyed in conformity with such new instructions as may be issued by the proper Department hereafter. Some modification of the eastern boundary, as claimed by Brooks survey, is recommended by Major-General Ord, in a communication addressed by him to Adjutant General Townsend, of which a copy is herewith transmitted, and it may perhaps also be necessary to modify it slightly in favor of the Mexican claim to the Ojo de Agua de Figuiron (sic) in case that claim should be patented as last surveyed by Thompson.

There were formerly on the old water lot map of the City of San Francisco, made by Jasper O'Farrell in 1847, three tracts called Government Reserves, which were reserved for military, naval and public use, by order of Col. R. B. Mason, military Governor of California, out of beach and water lot property granted by military Governor Kearney to the City of San Francisco. One of these Reserves comprised all of Rincon Point east of Beach Street, another was bounded by Montgomery, Washington and Jackson Streets, and deep water, and another by the beach and water lots bounded by Sansome, Broadway and Pacific Streets, and deep water. Only portions of these Reserves finally came into possession of the Government -- one at Rincon Point, occupied for a U. S. Marine Hospital; another, the present Custom House Block, bounded by Sansome, Washington, Battery and Jackson Streets. The tenure of these sites, by virtue of this Reservation, seems to have been abandoned by the United States, and for the site of the U. S. Marine Hospital at Rincon Point the city conveyed to the United States a block of six fifty-vara lots on Harrison, Spear and First Streets. (See Dwinelle's Colonial History, etc., addenda, page 299.). In like manner the state conveyed the Custom House Block to the United States. (Dwinelle addenda, pp. 278-281). These tracts are therefore not to be considered as excepted from the confirmation of the Pueblo lands. Exceptions are taken to this official plat on account of the segregation of the several tracts of tide marsh lands, as well as swamp and overflowed lands from the Pueblo boundaries.

. . . . .

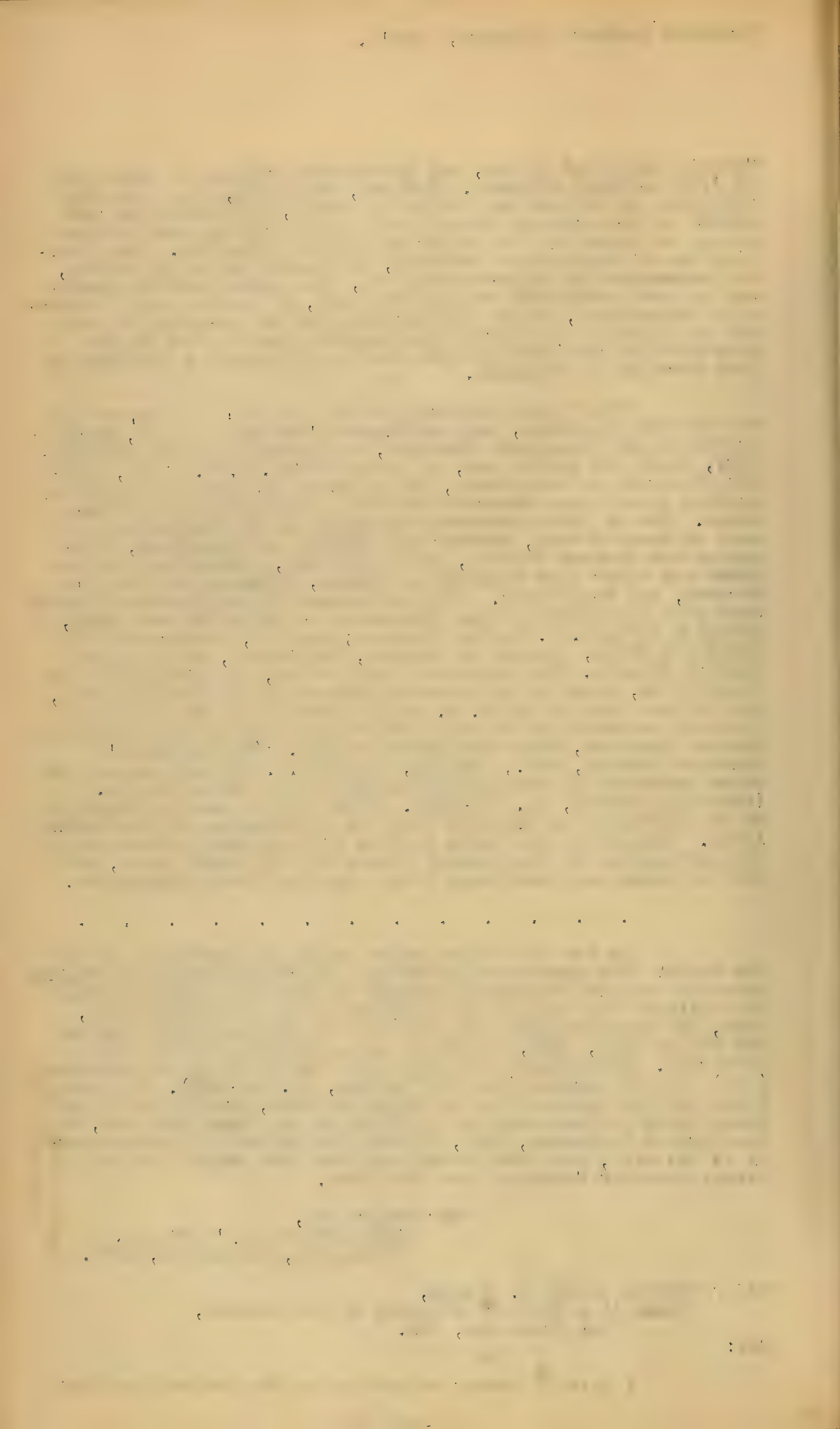
Do the tide marsh lands belong to the Pueblo or to the State? The decree of the Circuit Court confirming the Pueblo lands to the city evidently intends to confirm a right existing and valid at the date of the conquest of the country in July, 1846, and specifically names the line of ordinary high tide on the 7th of July, 1846, as one of the boundaries of the lands confirmed. The line of ordinary high tide includes the esteros (sic) or tide marshes (See 2nd Wallace, pp. 587-590). If then these marshes belonged to the Pueblo in 1846, the United States could not give them away to the State by the Swamp land Act, of the 23rd of September, 1850, I think the title to them is clearly in the city, and they should not have been segregated by Deputy Surveyor Stratton from its lands.

War Department,  
Adjutant General's Office,  
Washington, January 13, 1870.

Major General George H. Thomas,  
Commanding Military Division of the Pacific,  
San Francisco, Cal.

Sir:

I have the honor to inform you the Secretary of War





Presidio southern boundary, cont'd.

has approved the recommendation contained in your indorsement of the 22nd ultimo, for a re-survey of the Presidio Reserve, and the General of the Army directs that you cause the same to be made, and published in orders, and a copy of the orders and plat of the new survey forwarded to this office for such further action as may be found necessary.

Very respectfully, your obedient servant,  
E. D. Townsend, Adjutant General.

-oOo-

Engineer's Office.

Headquarters Department of California,  
San Francisco, Cal., July 11, 1870.

Colonel John P. Sherburne, A. A. G.  
Headquarters Department of California,  
San Francisco, Cal.

Sir:

I have the honor to forward herewith two lithographed copies of the late detailed survey of the Military Reservation at the Presidio of San Francisco, Cal., made in accordance with instructions contained in Special Orders No. 22, Headquarters Department of California, February 3, 1870, also two copies of a map showing on an enlarged scale a plan of the Government buildings at the Presidio.

Great care has been exercised in the field work which has been conducted by and under the direction of Lieutenant R. H. Savage, U. S. Engineers, especially in the accuracy of the survey along the southern line, from the south-east corner to the mouth of Lobos creek on the ocean beach, upon which line the limits of the reservation are based, as will be seen by referring to a letter from Joseph G. Totten, Brevet Brigadier General of Engineers, to Hon. C. M. Conrad, Secretary of War, October 28, 1851, containing recommendations upon which the President's order of December 31, 1851, was based for the changing of the reservation, as ordered to be set aside by Executive authority, November 6, 1850.

The description is somewhat vague as regards that part of the boundary which traverses Mountain Lake. The words describing the limits are as follows:

"The land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and north and east of a line passing through the middle of said pond and its outlet to the channel of entrance from the ocean."

The southeast corner was located under my direction in 1868, and at a point designated and sworn to by E. D. Keyes and Milo Hoadly, and the point so determined has been considered as the initial point of the present survey.

The middle point of a lake may be looked upon as a point of doubtful locality, if it had been referred to as the center point of the surface of the lake at ordinary low water,





its position might have been determined with more accuracy.

To follow, as far as possible, what is supposed to have been the true spirit of the description, the point midway on a meridian line through the most southerly point has been taken and the line joining the southern and this point in connection with the line from the middle point, so assumed, to the outlet of the lake are taken as that part of the southern boundary line that traverses "Mountain Lake", so called.

The outlet to the lake has long since been closed up and the company known as the "Spring Valley Water Works" have an iron pipe running through a tunnel and following pretty generally the direction of the old outlet, as I am informed for a distance of nearly 500 feet, coming to what first appears as the source of Lobos creek showing itself as a small spring, thence the center of Lobos creek to the ocean is taken as the remainder of the southern boundary.

The speciality (sic) of this survey consisting in its continuation to ship's channel or deep water; the curve of twenty-four feet has been so assumed and this curve as taken from the U. S. Coast Survey hydrographic sheet has been joined to the present land survey.

I have been unable to find any authority defining exactly what shall be used at the deep water line; the custom of the Coast Survey has been, it is believed to limit it to 18 feet in depth. The Statutes of the State of California recognize the 24 foot curve as the limiting line and the State has so disposed of tide lands by virtue of different legislative acts.

Since this reserve borders upon tide lands constructively claimed by the Executive portion of the State Government of California, it has been considered advisable to carry the late survey to cover as great an area as would be liable to be covered by the blocks of land in case a sale of these tide lands should be attempted by the State.

The area has been calculated to embrace both arable and marsh land lying north of the southern boundary and limited by high water line.

The principal lines of the survey have been run by Lieutenant Savage in person while Lieutenant Lyle was attending to the details of buildings and topography.

The area has been obtained by the use of the Polar Planimeter, which from repeated trials has been found to give remarkably accurate results.

It will be noticed that the supply of water on the Reserve, other than that coming from Mountain Lake and Lobos Creek, is very small, while from these sources the supply can be received only from the works of the Spring Valley Water Company.

From the peculiar direction given to the southern boundary line it will appear that private parties are allowed a frontage on the southern bank of the lake, and I am informed that the land adjoining is the property of the above mentioned incorporation.

Respectfully submitted,  
Geo. M. Wheeler, Lieutenant of Engineers.





RESOLUTION NO. 13,357.

(February 10, 1879 )

"Whereas, This Board having voted on the 23rd of December last not to appeal from the decision of the Commissioner of the General Land Office, in the pueblo lands and the Stratton survey thereof, and an unauthorized notice of appeal having been subsequently filed in the name of the City and County of San Francisco; Resolved, That the resignation of the special counsel for the said City and County of San Francisco in said matter be and the same is hereby accepted.

"And the clerk is hereby directed to advertise this resolution as required by law.

" In Board of Supervisors, San Francisco, November 3dm 1879."

Passed February 20th, 1879.

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RESOLUTION NO. 13,370.

(February 17, 1879)

"Resolved That his Honor, the Mayor, be and is hereby requested to transmit by telegraph to the Honorable Secretary of the Interior, Resolution No. 13,340 (New Series) setting forth that:

"Whereas, This Board having voted on the 23rd of December last not to appeal from the decision of the Commissioner of the General Land Office in the matter of the pueblo lands and the Stratton Survey thereof, and an unauthorized notice of appeal having been made subsequently filed in the name of the City and County of San Francisco;

"Resolved, That the resignation of the late special counsel for the City and County of San Francisco in the matter be and is hereby accepted."

Passed February 17th, 1879)

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THE PRESIDIO OF SAN FRANCISCO, CALIFORNIA.

-oOo-

ABSTRACT OF TITLE, AND OF EVIDENCE RESPECTING THE  
SOUTHERN BOUNDARY.

-oOo-

Prepared in the Office of the Chief of Engineers to  
accompany a letter to the Secretary of War dated April 8th, 1879.

(Washington, 1879.)

pp. 7 (and appendix.)

-oOo-

A.-- The Presidio and Fort (Fort San Joaquin,) being held by the organic laws of Mexico, as an inalienable part of the public domain, Benito Diaz, on the 3rd of April, 1845, petitioned to the Governor of California for a grant of land afterwards known as the Rancho de los Lobos, exclusive of the Presidio and fort, which were within the exterior bounds of said land.

(Appendixes 3, 6, 9, and 12.)

B.-- June 25th, 1846, Don Pio Pico, Mexican Governor of California, granted the above named land, not excluding the Presidio and fort tracts, to Benito Diaz.

(Appendix 1.)

Note.

This grant was actually made after the conquest of California, July 7, 1846. It was antedated and otherwise fraudulent (see appendix 3) but it was the primary cause, (by reason of the conflict which arose between the successors of Diaz as owners of the claim to the Rancho de los Lobos, and the Commanding Officer at the Presidio,) of the adoption of the limits of the "Presidio tract" when it was reserved by President Fillmore, Dec. 31st, 1851, as will be seen in this abstract.

C.-- September 9th, 1846, Benito Diaz and wife conveyed the rancho to Thomas O. Larkin.

(Appendix 2.)

D.-- In June, 1848, Lieutenant Wm. H. Warner, Corps of Topographical Engineers, laid off a reserve at the entrance to San Francisco harbor, embracing the Presidio, Fort Point and Point San Jose. The reserve was made by Captain J. L. Folsom, Assistant Quartermaster, under an order from Colonel Mason, 1st dragoons, Military Governor of California, dated the 29th March 1848. The lines of the Reservation drawn by Lieutenant Warner, were evidently drawn upon a copy of a chart by Wilkes' Exploring Expedition of 1841.

(Appendix 4 and 29.)

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E.-- November 30th, 1848, the President constituted a Joint Commission of Navy and Engineer officers for an examination of the Coast of the United States lying on the Pacific Ocean. Among the duties of the Commission was the selection of points of defence.

(Appendix 5.)

F.-- September 29th, 1849, Thomas O. Larkin and wife conveyed the Rancho de los Lobos to Dexter R. Wright.

(Appendix 6.)

G.-- December 28th, 1849, Gen'l. Riley Commanding the 10th Mil. District wrote from Monterey Cal. to the Adj't. Gen'l. of the Army, that the reserve made by Capt. Folsom, A. Q. M., was greater than was required for military purposes; that the owners of the Rancho de los Lobos were willing to give the land occupied by the Presidio, and fort, and the adjoining ground to the U. S. for purposes of fortifications, and he thought it would be advisable to relinquish all the land that might be found unnecessary for military purposes, the designation to be made by the Joint Commission of Navy and Engineers Officers.

(Appendix 7.)

H.-- February 19th, 1850, the Adjutant General of the Army wrote to General Riley Commanding the 10th, Military Department that the territory ceded by the Mexican Government before the war, for the public uses of Mexico should be considered the property of the United States, and appropriated accordingly.

(Appendix 8.)

I.-- March 31st, 1850, the Joint Commission of Navy and Engineer officers wrote to the Secretaries of the War and Navy Departments, recommending the reservation of certain lands around the Bay of San Francisco for public purposes, and among them was the following described tract, embracing the Presidio of San Francisco and Point San Jose, viz:

"From a point 800 yards south of Point" (San) "Jose to the Southern boundary of the Presidio, along that southern boundary to its western extremity, and thence in a straight line to the Pacific, passing by the Southern extremity of a pond that has its outlet into the channel, between Fort Point and Point Lobos."

(Appendix 10.)

J.-- April 5, 1850, Dexter R. Wright, in order to settle disputes as to Boundaries, entered into a bond in the sum of \$50,000. for the faithful performance of his agreement to convey to the United States and Presidio and fort tract and Point San Jose, in consideration of the relinquishment by the United States of "all control, occupation and military possession" of the remainder of the Rancho de los Lobos.

In this bond the Presidio and fort tract is described as follows: "Beginning at a point on the crest of a high hill southeast of the Presidio and marked by a stake which was established in presence of Capt. E. D. Keyes, Capt. H. W. Halleck and A. D. Merrifield Esqs., on the third day of April, Eighteen hundred and fifty; thence running in a northerly direction parallel





to Larkin Street, in the town of San Francisco to low-water mark on the southerly shore of the entrance to the Bay of San Francisco, thence running along the low-water line of said bay and of the sea to the mouth of the outlet of the pond between Battery Point and Point Lobos, and southwest of said Presidio; thence along the middle of said outlet and pond to the southern extremity of said pond; thence in a northeasterly direction to the point of beginning."

The bond was witnessed by H. W. Halleck and J. Wing Allen, and approved by General Riley by endorsement.

(See Appendix 11.)

The boundaries described in Wright's bond were adopted as a compromise with him.

(See Appendixes 6, 7, 9, 11, 12, 14, 19, and 24.)

#### Note.

The Presidio tract in the President's orders of Dec. 31, 1851, is (as far as has been discovered,) for the first time described in Wright's bond. It was doubtless selected by the Joint Commission, since it is mentioned in the letter from its senior officer to the Secretary of War, of March 31, 1850, (See appendix 10,) and a previous description may be found perhaps in the records of the Head Quarters of the Department of California, or of the Division of the Pacific, in a letter addressed by Colonel Smith to General Riley, or to Captain Halleck, sometime in the month of March, 1850. See also, Captain Halleck's letter to Colonel Smith, March 20, 1850, and General Riley's letter to the Adjutant General of the army, April 28, 1850, appendices 9 and 14.

K.-- April 27th, 1850, Captain E. D. Keyes, 3d artillery, commanding at the Presidio of San Francisco, in pursuance of instructions from General Riley, who had approved the compromise with Wright, issued a post order with-drawing all control, occupation, and military possession of the land before known as the Presidio Reserve, (the Folsom Reserve, see Appendixes 4 and 29.) southward of a line running from a stake on the crest of a high hill S. E. of the Presidio to the center of a pond S. W. of the Presidio, and eastward of a line running thro' the same stake, parallel to Larkin street, with the exception of Point San Jose.

(Appendix 13.)

L.-- April 28th, 1850, Brevet Brigadier General Riley, commanding the 10th Military Department wrote from Monterey, Cal., to the adjutant General of the army, transmitting a copy of Wright's bond for a deed to the Presidio and fort tract and to Point San Jose; expressed his concurrence in the opinion given by the Joint Commission of Navy and Engineer officers, and of Capt. Halleck the Engineer officer attached to his Head Quarters, that the arrangement with Mr. Wright secured to the United States all the land that would ever be required for military purposes on the south side of the entrance to the Bay of San Francisco, and recommended approval by the Secretary of War.

The letter was endorsed as follows by Secretary of War Crawford: "The agreement is disapproved. The acceptance of a quit-claim to a parcel of land now, as I think, rightfully in the possession of the U. S. might hereafter prejudice the right





of the Government to the remainder of the freehold embraced in the "Diaz" grant.

"G. W. C."

(Appendix 14.)

M.-- May 17th, 1850, Captain Keyes, Commanding at the Presidio, caused a cannon to be erected in lieu of the stake mentioned in Wright's bond as having been planted in April, 1850, at the S. E. corner of the Presidio Reserve in the presence of Captain Keyes, Captain Halleck and Mr. Merrifield.

(Appendix 15.)

N.-- November 6th, 1850, the President ordered certain reservations in the vicinity of San Francisco. One of these reservations (designated as Reservation No. 1,) embraced the Presidio, Fort Point, and Point San Jose, and the description used in the order is essentially the description used in the recommendation (See Appendix 10) of the Joint Commission of Navy and Engineer Officers.

(Appendixes 16 and 32.)

#### Note.

It will be observed that in this order the President speaks of "the southern boundary of the Presidio" as a known line. It was probably the southern boundary of the tract mentioned in Wright's Bond, April 5, 1850, as the "Presidio and Fort Reserve", and in the President's second order of December 31, 1851, as the "Presidio tract". If this be the case the conjectural line sent by General Totten to the Secretary of War, October 28, 1851, as the southern line of the President's first reserve (see appendixes 19 and 30) was an error, since a straight line drawn from a point 800 yards south of Point San Jose and tangent to the southern side of the "pond that has its outlet into the channel between Fort Point and Point Lobos" would not pass through the S. E. corner of the Presidio tract (See Appendix 32.) Indeed the order of November 6, 1850, itself shows that a line drawn from a point 800 yards south of Point San Jose to the southern boundary of the Presidio, and thence to the south side of the pond would not be in a straight line as drawn on the sketch sent by General Totten. It is evident that there was an angle in the southern boundary of the first reserve at the easterly end of "the southern boundary of the Presidio", else the order would have read "from a point 800 yards south of Point San Jose to the southern extremity of a pond, &c."

Doubtless the easterly end of the "southern boundary of the Presidio" mentioned in the President's first order was the "southeast corner of the Presidio tract" referred to in his second order -- that of December 31, 1851--so that the first order is confirmatory of the incorrectness of the survey of the second reserve made by Stratton and mentioned further on in this abstract.

O.-- December 31st, 1851, the President modified the Presidential order of Nov. 6, 1850, which established the Presidio Reservation and reduced the area of that reservation. (See appendixes 19 and 32.) The description of the new boundaries is essentially the same as used in a letter from the senior officer of the Joint Commission of Navy and Engineer Officers,

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Oct. 27, 1851, to the Chief Engineer of the army. (See appendix 18.)

The Secretary of War transmitted the President's order to the Secretary of the Interior, on the 5th of January, 1852, and enclosed a letter from the Chief Engineer of the Army, dated Oct. 28, 1851, recommending the modification and reduction, and transmitting the above mentioned letter from Colonel Smith, the senior officer of the Joint Commission. The Chief Engineer stated that there was no plat of the Presidio tract on file in his office, and enclosed a conjectural plat of the reserve drawn by the Board (Commission).

Note.

The conjectural plat here referred to (see appendix 30) was undoubtedly drawn in this office by the Senior member of the Joint Commission, who was then in Washington, to illustrate his letter of the 27th Oct., 1851, in reply to the letter from the Chief Engineer two days before, (Appendix 18.) There being no plat of the Presidio Reserve in this office, Colonel Smith used for drawing his conjectural lines, a chart of the entrance to the harbor of San Francisco, made by Wilkes' Exploring Expedition, 1841, as is shown by comparing it with a copy of that chart on file in this office which was received from the Expedition in 1849. The same chart was used by Lieut. Warner in his sketch of the reserve made for Captain Folsom, A. Q. M. (See appendix 29.) The Exploring Expedition chart was doubtless conjectural to a great degree (See appendix 31, where it is compared with a recent Coast Survey chart) so that Colonel Smith's conjectural boundaries of the Presidio tract were drawn no doubt from memory, on a conjectural chart and would not be likely to coincide with the description of the tract contained in Wright's bond, (see appendix 11) and exhibited in the map accompanying said bond (see appendix 33) which map was stated, by the Chief Engineer, April 25, 1853, to be a map of the Presidio Reservation, (see appendix 20); also contained in Keyes' order (see appendix 13) and in the letter from Colonel Smith himself to the Chief Engineer Oct. 27, 1851. (See appendix 18.)

P.-- April 25th, 1853, the Chief Engineer wrote to the Commissioner of the Land Office stating the modified limits of the Presidio Reservation contained in the President's order of Dec. 31, 1851, and enclosing a copy of the plat accompanying Wright's bond (see appendix 33) as exhibiting the same. Unfortunately the description of the Presidio tract contained in Wright's bond, was not sent to the Commissioner.

(See appendix 20.)

Q.-- July 30th, 1862, Thaddeus R. Brooks, Civil Engineer, Deputy Surveyor General of California, surveyed the southern line of the Presidio Reservation. General Halleck certifies (see appendix 22) that the S. E. corner of the Brooks' survey is the same as the one established by the Joint Commission of Navy and Engineer Officers. General Ord states (see appendix 23) that the S. E. corner of the Brooks' survey is at the point where Keyes planted the cannon, as is the same as the S. E. corner of the Wheeler survey to be mentioned further on.

(Appendixes 21 and 34.)

R.-- In March, 1866, James T. Stratton, United States Deputy Surveyor, under instructions from the Surveyor General of California, included in his survey of the Pueblo lands





of San Francisco, a survey of the Presidio Reservation.

The following note appears attached to the Field Notes of this survey:

"U. S. Surveyor General's Office,  
"San Francisco, Dec., 13, 1869.

"And further in relation to the above mentioned surveys by Deputy Surveyor Stratton, of the exterior limits of the Pueblo lands of San Francisco and of the U. S. Military Reservation of the Presidio, I express my opinion that they are erroneous and not in conformity with the decree of the U. S. Circuit Court and the acts of Congress and instructions of the President of the United States relating thereto; my reasons for this opinion being more fully set forth in a communication to the Commissioner of the General Land Office, dated Dec. 8th hereto appended.

"Sherman Day,  
"U. S. Sur. Gen'l. for California."

Note.

In Mr. Stratton's survey he ran the southern boundary of the Presidio Reservation, not from the "southeastern corner of the Presidio Tract" as required in the President's order of December 31st, 1851, but as a part of a straight line running from a point 800 yards south of Point San Jose to the southern side of the pond mentioned in the President's order, thus cutting off a large portion -- about 100 acres -- of "the Presidio Tract". His S. E. corner is about 1,200 feet north of "the crest of the high hill S. E. of the Presidio" and of the point selected by the Joint Commission and adopted in the agreement with Wright; which was at the date of the President's order of December 31, 1851, and has been ever since, the true S. E. corner. Instead of being on the crest, he makes his S. E. corner far down the northern slope of the hill.

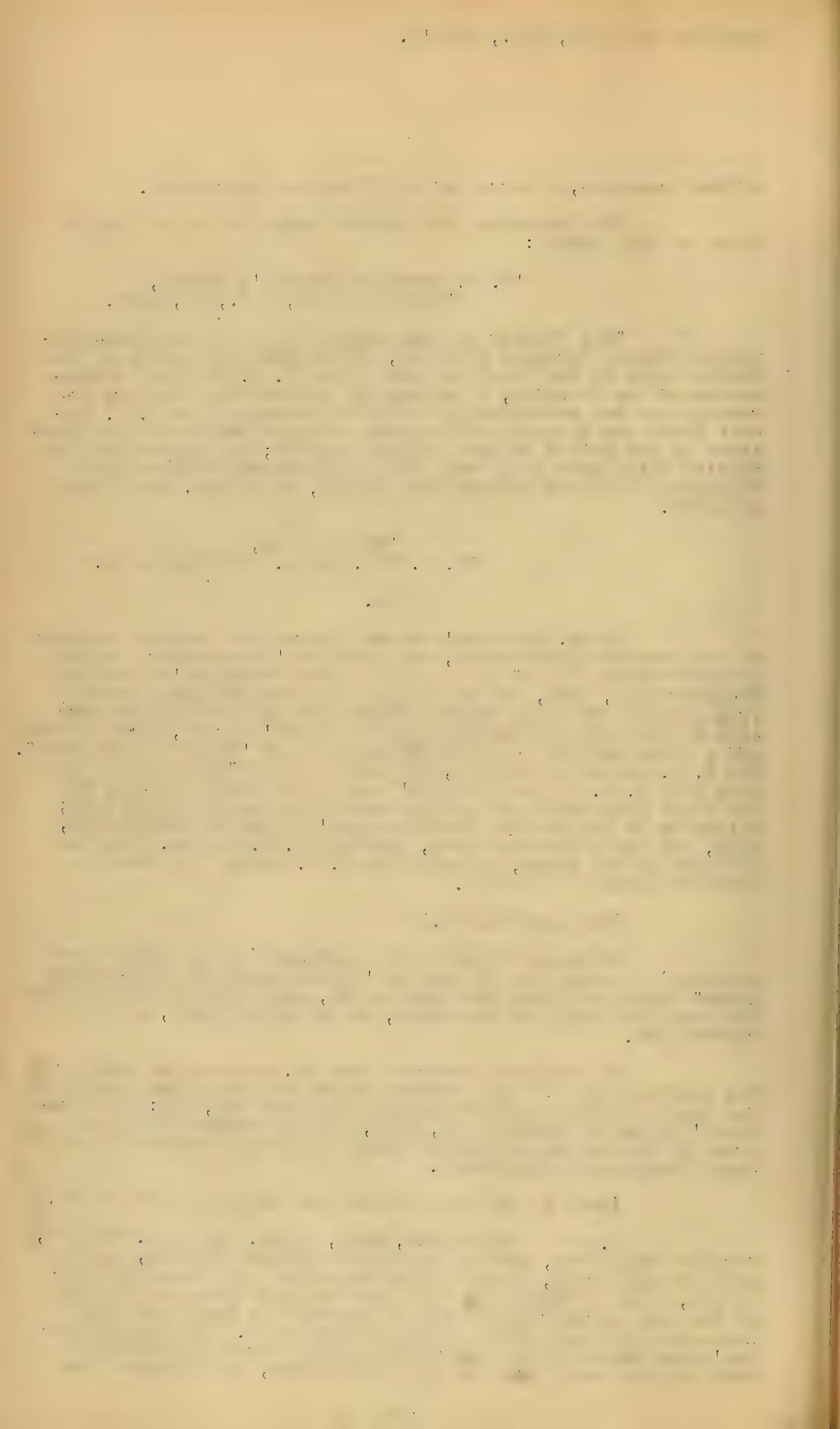
(See appendix 35.)

Surveyor Stratton also excluded (it is believed improperly) a large area of what he "termed swamp and over-flowed lands" which is within the reservation, and also the area between the limits of high and low water, on the water front, of the reservation.

It should be remarked that Mr. Stratton no doubt ran the southern line of the reservation as well as it was possible for him to do with the information furnished him, viz: the President's order of December 31, 1851, and the conjectural plat drawn in Washington by Colonel Smith the senior officer of the Joint Commission from memory.

(See O of this Abstract and appendixes 19 and 30.)

S.-- July 11th, 1870, Lieut. George M. Wheeler, Corps of Engineers, sent to Assistant Adjutant General, Department of California, a copy of his survey of the Presidio Reservation, made in compliance with instructions from the Secretary of War that a resurvey be made to include the Swamp and tide lands and the whole water front to deep water. Lieutenant Wheeler's map extended the reservation to the curve of 24 feet of water on the water front of the reservation, and included the





low lands which were excluded from the Stratton Survey. The S. E. corner of Wheeler's Survey is at the crest of the high hill lying S. E. of the Presidio (see Wheeler's map and appendixes 25 and 35); at the point at which Captain Keyes planted the cannon (see appendixes 15, 23, 24, and 25); at the point where the Joint Commission established the S. E. corner, (see appendixes 22 and 23) which was the original S. E. corner of the Presidio tract, (see appendix 11.)

T.-- March 28, 1871, the Commissioner of the General Land Office expressed his disapproval of the Stratton Survey of the presidio of San Francisco in the following words:

Department of the Interior, General Land Office,  
Washington, D. C., March 28, 1871.

Hon. W. W. Belknap, Seretary (sic) of War;:

Sir:

After a careful examination of the returns of the Survey executed by Deputy Stratton, the Commissioner finds General Ord's excptions (sic) to the Survey well taken, and the same cannot be approved by this office.

The Deputy Surveyor appears to have been guided principally in the execution of his Survey by the rough diagram of Reservation No. 1, heretofore referred to, and as he disregarded the requirements of the President's order of Dec. 31st, 1851, relative to the Southeastern corner of the reservation, there can be no doubt of the incorrectness of his Survey.

. . . . .

I have the honor to be, very respectfully,

Willis Drummond,  
Commissioner.

(Appendix 26.)

U.-- August 19th, 1872, the Commissioner of the General Land Office approved Lieutenant Wheeler's Survey in the following words:

The above Survey of the Presidio Military Reservation by Lieut. George M. Wheeler, (in 1870) being in conformity with the modified President's order of December 31, 1851, is adopted as correct and hereby approved.

Willis Drummond,  
Commissioner.

Department of the Interior,  
General Land Office, August 19, 1872.

(Appendix 27.)

V.-- November 11th, 1878, the Commissioner of the General Land Office approved in all its parts Stratton's Survey of the Pueblo of San Francisco, (including the Survey of

THE UNIVERSITY OF CHICAGO  
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TO THE EDITOR:  
I am pleased to inform you that the manuscript of my paper, "The Structure of the Nucleus," has been accepted for publication in the *Journal of Nuclear Energy*.

Very truly yours,  
J. R. DILLON

Enclosed for you are two copies of the proof of my paper. I would appreciate it if you could return them to me as soon as possible.

I am also enclosing a copy of the *Journal of Nuclear Energy* for your information. The paper is published in the March 1964 issue.

I am sure that you will find the paper of interest. I am sure that you will find the paper of interest.

I am sure that you will find the paper of interest. I am sure that you will find the paper of interest.

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the Presidio Reservation) with the exception of the eastern boundary of the Presidio reservation, which was modified by act of Congress May 9, 1876, and subsequent to Stratton's Survey.

(Appendix 28.)

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Note.

This abstract has been prepared to accompany an application for a reconsideration of the above mentioned decision.

Office of the Chief of Engineers,  
Washington, D. C., April 7th, 1879.

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#### Appendix 1.

Grant by Governor Pio Pico to Benito Diaz of the Rancho de los Lobos. #

Pio Pico, first member of the departmental assembly and constitutional governor of California.

Whereas D. Benito Diaz has solicited for his personal benefit, and that of his family, the land known by the name of Punta de Lobos, situated in the port of San Francisco, the necessary investigations having been previously made, I have, in virtue of the faculties conferred upon me, granted to him in the name of the Mexican nation, by a decree of this day, the said land, declaring to him the ownership thereof by these presents, in conformity with the law of 18th August, 1824, and the regulation of 21st November 1828, subject to the approval of the most excellent departmental assembly, and to the following conditions: 1st. He may fence it in without prejudice to the highways, roads, and privileges, destining it to the use or cultivation which

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#From Ex. Dec. No. 17, House of Representatives, 31st Cong.,  
1st Sess.  
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may best suit him.

2nd. He shall ask for the judicial possession from the respective magistrate in virtue of this despatch, and the boundary shall be marked by his authority with the respective landmarks.

3d. The land of which donation is made to him consists of two square leagues, (dos sitios de ganado mayor) a little more or less, comprehending from the lagoon of the high hill to the Punta de Lobos, and the same which is shown by the map which accompanies the documents. The magistrate who gives possession shall have it measured according to law. I consequently command, that holding the present title as firm and valid, a record be kept thereof in the corresponding book, and it be delivered to the party interested for his security and other ends.

Given in the City of Los Angeles on the twenty-fifth day of June, eighteen hundred and forty-six, on this common paper

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PUBLISHED WEEKLY  
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Abstract of title, etc., cont'd.

for want of sealed paper.

(L. S.)

Pio Pico.

Matias Moreno

Secretary ad interim.

This title has been recorded in the corresponding book.

Moreno.

## Appendix 2.

Deed from Benito Diaz to Thomas O. Larkin, of the Rancho de los Lobos. #

In the port of Monterey, upper California, on the nineteenth day of September, eighteen hundred and forty-six, before me, Walter Colton, justice of the peace of this district, and before the undersigned witnesses, appeared Don Benito Diaz, and said, that, in his own name and in that of his wife, Dona Luisa Soto de Diaz, and other heirs and successors, and whoever, through them, may have any kind of title, voice, or fame, that he sells and gives in public sale and perpetual abeiteration, in right of inheritance, and forever and ever, to Mr. Thomas O. Larkin, resident of this place, a land of which he is owner, in virtue of a grant made to him by his Excellency the Governor of the department, Don Pio Pico, according to the title which accompanies the present writing, dated the twenty-fifth of June of the present year, which land is composed of two square leagues, a little more or less, situated in the entrance and port of San Francisco, with the boundaries

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#From Ex. Doc. No. 17, House of Representatives, 31st Cong. 1st Sess.  
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mentioned in said title, which are from the lagoon of the high hill to the Punta de Lobos. The seller declares that he has neither alienated nor mortgaged it, and that it is free from all public burdens; and, as such, he sells it for the price of one thousand dollars in common silver coin, which he has received to his entire satisfaction; that, from this time, he renounces, and separates himself from the dominion, ownership, and every other right which he may have to said land, renouncing and transferring it to the buyer, that he may dispose of it as of a thing which belongs to him, the settler binding himself that this sale shall be to the purchaser certain, sure, and effective, and that no lawsuit shall molest nor move him.

In witness whereof, he signed it with me and the two subscribing witnesses.

Walter Colton,  
Chief Magistrate, Monterey.  
Benito Diaz,  
J. de Castaneda,  
Jose Joaquin Gomez.

Guillermo R. Garner

Magistrate's Secretary.





In said day, month and year, likewise appeared before me and the witnesses already mentioned, Dona Luisa Soto de Diaz, and said, that in her own name, and in that of the children which she at present has, and of those which she may have in future, she consents to the sale of the before mentioned place, and that she spontaneously and voluntarily renounces whatever right she or her children may have thereto.

Walter Colton,  
Chief Magistrate, Monterey,  
Luiso Soto,  
J. de Castaneda,  
Jose Joaquin Gomez.

Guillermo R. Garner  
Magistrate's Secretary.

This instrument of writing was sealed, signed, and delivered in this office, and in my presence, this nineteenth day of September, one thousand eight hundred and forty-six.

Walter Colton,  
Alcalde of Monterey.

William R. Garner, Secretary.

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### Appendix 3.

Letter from Capt. J. L. Folsom, A. Q. M. to Major Thomas Swords, Quartermaster, U. S. A., dated June 6th, 1847, reporting his objections to Larkin's Title to the Rancho de los Lobos. #

Assistant Quartermaster's Office,  
San Francisco, California, June 6, 1847.

Sir:- In compliance with your instructions, the following report is submitted in relation to Mr. T. O. Larkin's land, in the vicinity of San Francisco. I am forced to believe that Mr. Larkin's title is not good, for the following reasons:

1st. The old fort, at the narrows, was built and has had guns mounted upon it for the last seventy or eighty years, it being the only work commanding the entrance to this bay.

The Presidio or barracks hard by were built thirty five years since, by the Mexican soldiery, and have been occupied by a Mexican garrison for upwards of thirty years, they being the only quarters for troops on this side of the bay. It is but four or five years

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#Ex. Doc. No. 17, House of Representatives, 31st Cong., 1st. Sess.  
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since the military commandant resided there; and, even at this moment, one or more old Mexican soldiers continue to reside there; Both these works are on the land claimed by Mr. Larkin.

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2d. I am assured by General Vallejo and Colonel Prudhomme, (sic) (the latter a Mexican lawyer,) that it is contrary to the organic laws of Mexico to sell or convey away any lands which might be wanted for "forts, barracks, field-works, and public purposes for defence;" and also that grants of land for farms, according to the Mexican colonization laws, are not to be made to come nearer than ten leagues of the sea-coast. Mr. Larkin's land is all within one league of the coast; consequently under both these laws, his claim is illegal.

Again, no land title is good in California until it has been approved by the departmental assembly, and Mr. Larkin's has no such approval.

It is also required that the alcalde of the town or district shall certify that each particular grant can be made without any prejudice to the public interest, or to private claims, before the grant can be made.

No such certificate was or could have been made, with reference to the grant in question.

3d. Repeated instructions, I am assured on the best authority, have been given from Mexico not to sell or grant any of the lands in or about this bay, which might be required for public purposes. Several attempts have been made by Senor Pina and Madam Briones, of this town, in the years 1843, 1844, and 1845, to obtain a grant of this same land, but they were all without success. When Angel island was granted to Senor Osio, such portions as might be required for public purposes were expressly reserved in the grant.

4th. Mr. Larkin's claim has signs of irregularity about it, which militates strongly against its validity:

1st. It is dated at the Pueblo de los Angeles, June 25, 1846, and is signed by Pio Pico, as governor. Governor Pico left the pueblo on the 17th or 18th of June, and did not return until the 15th or 20th of July. On the 25th of June, Governor Pico was at Santa Barbara of farther north.

2d. It is upon unstamped, and therefore illegal, paper. If the governor's signature has the effect of making it legal, I am still informed that it is a strong indication of informality, if not fraud.

3d. There is but little more than half the land within its boundaries which his claim entitles him to.

4th. His claim come within one mile of the custom-house or public buildings of the town of San Francisco, and this, I am told, is irregular and hitherto unknown, if not positively illegal.

Had my time permitted, this report would have been made at an earlier date, and would have been more complete.

I am, sir, respectfully, your most obedient servant,

J. I. Folsom,  
Captain, and Assistant Quartermaster.

Major Thos. Swords,  
Quartermaster U. S. Army,  
Sutter's Fort, Sacramento, California.





Appendix 4.

Letter from Capt. J. L. Folsom, A. Q. M., to the Acting Assistant Adjutant General 10th Mil. Dept. enclosing a Map from a Survey by Lieut. Warner of a Reservation at the Presidio of San Francisco, Cal. which he had selected in compliance with Orders from Col. Mason of March 29, 1848.#

Quartermaster's Office,  
San Francisco, Cal'f'a., June 23, 1848.

Sir:-

In compliance with instructions dated March 29th, 1848, I have made a selection of boundaries for the military reserve at the entrance of the Harbor of San Francisco.

The limits as now described had the approval of Major J. A. Hardie, Comg. at the Presidio Barracks, as also of Lieut. Wm. H. Warner, U. S. Topographical Engineers, to whose assistance I am indebted for a survey of the same, together with the accompanying map.

The reserve is bounded by a line drawn north 6° West and tangent to the eastern extremity of Alcatrazes Island, to the summit of a ridge of hills running sensibly parallel

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#Enclosure, -- 82 R. 1850, A. G. O.  
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to the Bay. This line extends (5,253) five thousand two hundred and fifty-three feet from the Bay of San Francisco to the summit of the hills, and thence South 42° West to the Pacific Ocean. From this point on the Coast, the boundary runs along the beach to the old Fort at the entrance of the Harbor, and thence still following the beach to the point of departure.

The reasons which led to the selection of so considerable a reserve are as follows:

1st. There is a line of hills running parallel to the Bay of San Francisco which overlooks the Old Fort at the entrance of the Harbor, as also the Presidio Barracks and the Bay, and this boundary includes the hills for about two miles along the south side of the Harbor.

2nd. Point San Jose is opposite to Alcatrazes Island and projecting, as it does, towards it, is capable of receiving a strong work for the defense of the Harbor in connection with fortifications upon the Island.

3d. The establishment of large military works upon the Bay would make a considerable reserve essential to the public interests, and the grounds best adapted to this purpose are secured by these boundaries. Besides these boundaries include a tolerable range for public stock, good sites for making bricks, and a large amount of fuel conveniently situated for the use of the garrison.

4th. The reserve has no settlers upon it at present (with one exception and he has no title) and no portion of it has

ARTICLE

The following is a summary of the findings of the study conducted by the American Medical Association and the National Academy of Sciences. The study was designed to evaluate the effectiveness of various medical treatments for the condition known as "X".

The study was conducted over a period of six months, during which time a total of 1,000 patients were treated with the various methods being compared.

RESULTS

The results of the study indicate that the treatment method known as "Y" was the most effective, with a success rate of 85%.

The second most effective method was "Z", with a success rate of 75%. The third most effective method was "A", with a success rate of 65%.

The fourth most effective method was "B", with a success rate of 55%. The fifth most effective method was "C", with a success rate of 45%.

The following table shows the results of the study in more detail:

TABLE I. Results of the study.

The following table shows the results of the study in more detail:

The results of the study indicate that the treatment method known as "Y" was the most effective, with a success rate of 85%. The second most effective method was "Z", with a success rate of 75%. The third most effective method was "A", with a success rate of 65%.

The fourth most effective method was "B", with a success rate of 55%. The fifth most effective method was "C", with a success rate of 45%.

The following table shows the results of the study in more detail:

The results of the study indicate that the treatment method known as "Y" was the most effective, with a success rate of 85%. The second most effective method was "Z", with a success rate of 75%. The third most effective method was "A", with a success rate of 65%.

The fourth most effective method was "B", with a success rate of 55%. The fifth most effective method was "C", with a success rate of 45%.

The following table shows the results of the study in more detail:



ever been looked upon as within the limits of San Francisco. The lands are not needed for improvements by citizens and the natural limits of the town do not extend to the reserve, in consequence of the bad or indifferent anchorage which is found along the whole front of it.

5th. Should it ultimately be found that the reserve is unnecessarily large it can be relinquished in part when no longer wanted, and in the mean time these limits will prevent such encroachments as would be pernicious to the discipline of the garrison and injurious to the public interests.

I am, sir, respectfully, your mo. obt. serv't.

J. L. Folsom,  
Capt. Asst. Qr. Master.

Lieut. Wm. T. Sherman,  
3d U. S. Artillery, A. A. A. Gen'l.  
Monterey, California.

Note.- For the map accompanying this letter see Appendix 29.

#### Appendix 5.

Extracts from Instructions to Joint Commission of Navy and Engineer Officers constituted Nov. 30, 1848, for the purpose of examination of the Coast of the United States lying on the Pacific Ocean, and the selection of points for defense &c.#

By direction of the President of the United States a joint commission of Navy and Engineer officers has been constituted for the purpose of making an examination of the coast of the United States lying upon the Pacific Ocean, with reference to points of defense and occupation for the security and accommodation of trade and commerce, and for military and naval purposes.

The commission, composed of Major J. L. Smith, (colonel by brevet), Major Cornelius A. Ogden, and Lieutenant Danville Leadbetter, of the Corps of Engineers, on the part of the Army; and Commander Lewis M. Goldsborough, Commander G. J. Van Brunt, and Lieutenant Simon F. Blunt, on the part of the navy, will proceed as they may be ordered, and without delay explore the whole extent thereof within the limits of the United States, with a

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#House Doc. No. 17, 31st Cong., 1st. Sess.  
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view:-

1. To ascertain what harbors, roadsteads, rivers, sounds, &c., will need defence by fortifications and other means.

In relation to this subject, the commissioners will specify in their report the several positions which they deem it necessary to occupy by military defences in each of the harbors, roadsteads, &c., designating such fortification, if any, as may



be of a temporary nature.

2. The commission will take into view, in the second place, the subject of immediate or early occupation of harbors and military posts, for the purpose of fixing the authority of the Government over the newly acquired territory and along the coast, maintaining tranquility, and securing a free and safe interior and coast-wise communication.

5. It is directed that the commission, besides stating, in the body of their report, what surveys, for military or naval purposes, general or particular, will be wanted in reference to the subjects of their examination, will make, in a separate communication, a specific call for each survey, arranging them severally in the order of their importance, as to time, and giving a memorandum of each, which will suffice as instructions for the complete execution thereof.

W. L. Marcy,  
Secretary of War.

War Department, Nov. 30, 1848.

J. Y. Mason,  
Secretary of the Navy.

Navy Department, Nov. 30, 1848.

#### Appendix 6.

Abstract of Title to Rancho de los Lobos, enclosed in a letter of December 28, 1849, from General Riley to the Adjutant General of the Army. #

First. Benito Diaz on the 3rd of April, 1845, petitioned for two leagues of land, and the petition was sent to Los Angeles.

Second. On 25 June, 1845, (6?) Pio Pico, Governor, makes a grant in conformity to law and in accordance with the petition.

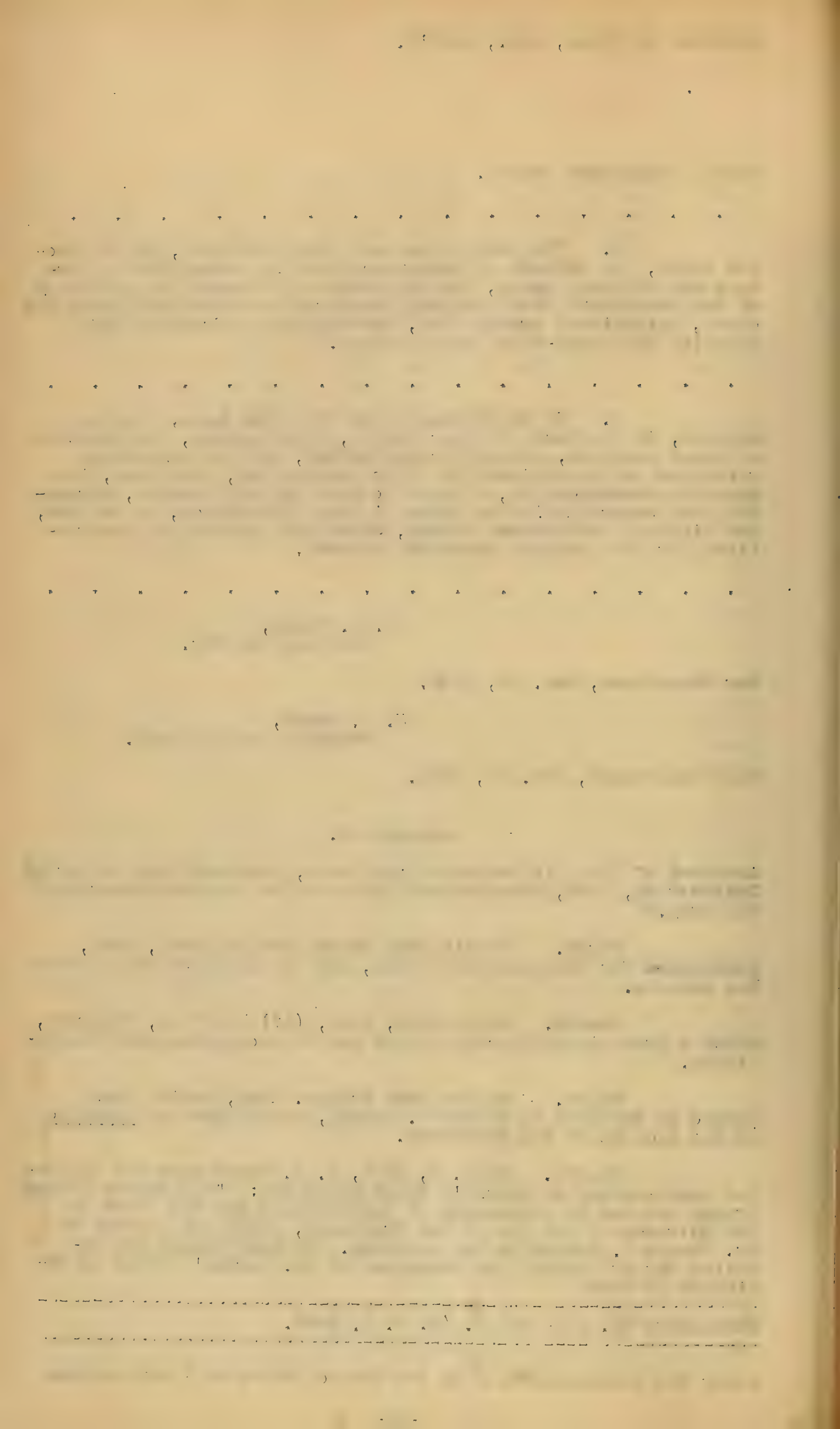
Third. On the 19th Septem. 1846, Benito Diaz deeded in due form to Thomas O. Larkin, and Larkin was invested by the Alcalde at San Francisco.

Fourth. Sept. 3, 1847, R. B. Mason made the following endorsements on Larkin's Title Deeds viz: "The United States troops are now in possession of the Presidio and Old Fort at the Entrance of the Bay of San Francisco, which are claimed by Mr. Thomas O. Larkin as his property. Without making any decision for or against the soundness of Mr. Larkin's title as exhibited by this

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paper the possession held by the United States will not operate





to the prejudice of any just claim to said property held by Mr. Larkin.

"R. B. Mason,  
Col. 1st. Drags.,  
"Gov'r. of Calif'a.

"Monterey, Sept. 3, 1849."

At the time the above endorsement was made the original petition could not be found but has since been found, together all the endorsements made at seat of Government, and is now in the possession of the proprietors thus making the title complete.

The present proprietors propose giving to the U. S. the Presidio, Old Fort and the necessary adjoining grounds for purposes of fortification.

Fifth. Sept. 29, 1849, Larkin and wife deeded to D. R. Wright and others.

I certify that the above is a correct copy.

Ed. R. S. Canby

A. A. G.

#### Appendix 7.

Extract from a letter from Brevet, Brig. Genl. B. Riley, commanding the 10th Military Department to the Adjutant General of the Army.#

Head Quarters, 10th Mil. Dept.,  
Monterey, Cal. Dec., 28, 1849.

General:

In Colonel Mason's communication of April 13th, transmitting the report of Capt. Halleck, Corps of Engineers, and my communication of June 1st the attention of the Department was called to the necessity of taking immediate measures for the prompt and final settlement of the titles to lands that have been selected in California for Government purposes.

. . . . .

I enclose also a sketch of the reservation at the Presidio of San Francisco, a copy of communication from Capt. J. L. Folsom, Assistant Quartermaster U. S. A., by whom under instructions from Col. Mason this reservation was made, an abstract of the titles of the present claimants to this reservation (Messrs. Wright & Co.) and

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# 312 R. (A. G. O.) 1850.  
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a copy of a communication from Capt. Keyes, 3rd Artillery, of





November 1st, 1849, to which your attention is respectfully invited. The title then held by Mr. Larkin and since transferred to Mr. Wright was fully discussed in the report submitted by Col. Mason on the 13th of April last, and I have since learned nothing in relation to it to induce me to dissent from the opinions then expressed.

The holders of this claim offer to give to the United States the Old Fort, Presidio, and the necessary adjoining grounds for purposes of fortification. I replied to this proposition that as the matter had already been referred to the War Department I was unable to do more than confirm the action of Col. Mason (See abstract of title). It will be seen however that the reservation embraced an area of more than five square miles, much greater in my estimation than can ever be required for military purposes, and I think it would be advisable to authorize the relinquishment of all that may be found unnecessary for such purposes; the designation to be made by the joint commission appointed by direction of the President, Nov. 30, 1848.

I have but little doubt that the proprietors of this claim would accede to such an arrangement and if it be not made that no exertions on their part will be spared to subvert the claims of the general government. Indeed I am satisfied that the most strenuous exertions are now being made and will continue to be made to establish titles to all the lands in and about San Francisco that have been reserved for public purposes.

Very respectfully, your ob'd't. Sev't.,

B. Riley  
Bvt. Brig. Gen. U. S. A.  
Commandg. the Dept.

Major Genl. R. Jones,  
Adjutant General, U. S. A.,  
Washington, D. C.

#### Appendix 8.

Letter from the Adjutant General of the Army to Bvt. Brig. Gen'l. B. Riley, Commanding the 10th Military Department. #

War Department, Adjutant General's Office,  
Washington, Feb'y. 19, 1850.

Sir:

The omission of the department to give you any instructions relative to the reservations for public use at San Francisco, or elsewhere in California, arose from the circumstance that the land laws of the United State had not yet been extended over that territory. The possession and title might have proven inconsistent; and in all such instances the Government is greatly endamaged. But it is to be remarked, that, whatever portions of the territory had been ceded by the Mexican authorities before the war for public uses, should be considered now as the property of the United States, and appropriated accordingly to any object demanded by the public want. In view of such a plain principle the Secretary of War cannot but suppose

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# Records of A. G. O.  
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Abstract of title, etc., cont'd.

that the Officers of the Army have conformed their action touching the subject of the public domain.

Owing to the high price of labor, temporary quarters only should be built in California.

Magruder's company of Light Artillery sailed from Baltimore on the 29th. January for California.

I am, sir, very respectfully,

R. Jones, Adjt. General.

Bvt. Brig. Gen'l. B. Riley  
Comm'dg. 10th Mil. Dept.  
Monterey, Cal.

#### Appendix 9.

Letter from Brevet Captain H. W. Halleck, Corps of Engineers, A. A. D. C., to Colonel J. L. Smith, Corps of Engineers, Senior member of Joint Commission of Navy and Engineer Officers for examination of Coast of the United States on the Pacific Ocean. #

San Francisco, Cal., March 20, 1850.

Colonel:

In the original petition for the Rancho of Punta de los Lobos the lands at the presidio and fort are excepted, although as stated in the papers accompanying the grant the limits of these lands had not been marked out; but in the grant itself these military reservations are not mentioned. The present owners of this Rancho, however, in order to settle this question, propose to convey to the government all their right and title to the land included within the broken pencil lines on the accompanying map. This proposed cession is nearly two miles long and more than a mile wide, embracing all the land in the vicinity of the present military establishments,

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# Enclosure No. 2 -- 120 R. (A. G. O.) 1850.  
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and all that it is supposed will be required for military purposes south of the bay, and west of the town of San Francisco; unless the point of San Jose should be required for a battery to support the works on Albatross Island. The proprietors propose to cede their claims to this point also, back as far as the sand hills between the lagoon and the point, being a reserve about 1/4 a mile square. General Riley has directed me to ask the joint board of commissioners whether, in their opinion, any other portion of the Lobos Rancho will be required for military purposes.

This is deemed a favorable opportunity to secure the title to this land, and one which should not be allowed to pass unimproved. If the title to this property should again change hands government officers may encounter great difficulty and delay in getting a clear title to the grant required for government use. Capt. Keyes' letter, a copy of which is enclosed, will explain the difficulties he has already experienced in attempting to hold possession against claimants to portions of this





Rancho -- portions which it is believed will never be required for military purposes.

The general has also directed me to request the Joint Board at their earliest convenience, to point out the lands required for military and naval purposes in the bays of Monterey and San Diego, in order that he may take immediate military possession of such lands and prevent the intrusion of pre-emption claimants. As squatters are taking possession of these lands and in some instances erecting costly buildings on them, it is deemed exceedingly important that the military and naval reserves should be marked out with the least possible delay.

Very respectfully, your ob'd't. serv't.,

H. W. Halleck,  
Bvt. Capt. Corps of Engineers. A. A. D. C.

Col. J. L. Smith,  
Corps of Engineers.

Appendix 10.

Letter from Col. J. L. Smith, Corps of Engineers, senior member of Joint Commission of Navy and Engineer Officers to the Secretaries of the War and Navy Departments March 31, 1850. #

San Francisco (California.)  
March 31st, 1850.

To the Hon'ble the Secretaries of the War and Navy Departments.

City of Washington.

Gentlemen:

. . . . .

Since our return here from Benicia we have examined the land on the Southern side of the entrance from the sea and also the islands in this neighborhood. We had examined the northern side of the entrance sometime ago.

The result of our examinations enables us to state the following as the surveys levellings and soundings in these waters which will be needed to afford the information desired as a guide to our decisions.

1. From a point 800 yards south of Point Jose to the southern boundary of

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the Presidio, along that southern boundary to its western extremity and thence in a straight line to the Pacific, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and point Lobos. The surveys and levellings to be minute at Point Jose and to the distance of 800 yards south of it,-- and at Fort Point to the distance of 1,200 yards around it inland. The soundings around the water boundary to show 1/2 fathom curves to the depth of 3 fathoms and fathom curves of 4 and 5 fathoms.

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION  
PUBLISHED WEEKLY  
CHICAGO, ILL., MAY 1, 1914

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PUBLISHED WEEKLY  
CHICAGO, ILL., MAY 1, 1914



. . . . .  
We therefore recommend the reservation for public use of all the land embraced by the general surveys above specified together with Yerba Buena, Alcatraz, and Angel Islands in San Francisco bay.

. . . . .  
Respectfully submitted on behalf of the Commission  
by y'r ob't serv't.,

Jno. L. Smith, B't. Col.  
and Senior Member

For the Secretary of War.

Appendix 11.

Bond by Dexter R. Wright to the Secretary of War, dated April 5, 1850, securing the Conveyance by said Wright to the United States of the Presidio and Fort tract and Point Jose, in consideration of the U. S. relinquishing control, occupation, and military possession of the remainder of the Rancho de los Lobos. #

Know all men by these presents, that I, Dexter R. Wright of the County of San Francisco and State of California, am held and firmly bound unto the Secretary of War of the United States in the sum of Fifty thousand dollars good and lawful money of the United States to be paid to the said Secretary of War, his agents and assigns; to which payment well and truly to be paid I do bind myself, my heirs, executors and administrators and every one of them firmly by these presents.

Sealed with my seal, dated this fifth day of April,  
A. D. Eighteen hundred and fifty.

D. R. Wright (L. S.)

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# Enclosure No. 1-- 2819. G. R. 1878.  
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In presence of  
J. Wing Allen  
H. W. Halleck.

The condition of this obligation is such that whereas the said Secretary of War, through his agents has agreed and does agree to immediately relinquish all control, occupation and military possession of and to all and every part of the tract of land known as the Rancho de los Lobos not included in the "Presidio and Fort Reserves", and the "Point San Jose" Reserve hereafter to be described in this instrument; if therefore the said Dexter R. Wright, on or before the first day of June next ensuing the date hereof; or in case of his death before that time, if the heirs, executors and administrators of the said Dexter R. Wright, on or before the first day of July next ensuing the date hereof shall, and do make, execute and acknowledge, or cause so to be, all and every such deed or deeds, conveyance or conveyances whatsoever shall be needful for conveying and confirming

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unto the said Secretary of War his agents and assigns a good and absolute quit-claim deed of all his right, title, interest, estate, claim and demand both at law and in equity, and as well in possession as in expectancy of, in, and to, all that certain piece of land situate south of the entrance of the Bay of San Francisco, and designated on the accompanying map as the "Presidio and Fort Reserves", and bounded as follows: beginning at a point on the crest of the high hill south east of the Presidio and marked by a stake which was established in presence of Capt. E. D. Keyes, Capt. H. W. Halleck and A. D. Merrifield, Esq., on the third day of April, Eighteen hundred and fifty; thence running in a northerly direction parallel to Larkin Street, in the town of San Francisco to low-water mark on the southern shore of the entrance to the Bay of San Francisco, thence running along the low-water line of said bay and of the sea, to the mouth of the outlet of the pond between Battery Point and Point Lobos and south-west of the said Presidio, thence along the middle of said outlet and pond to the southern extremity of said pond; thence in a northeasterly direction to the point of beginning with all and singular the hereditaments and appurtenances thereunto belonging; and also to that certain piece of land situate on the southern shore of the Bay of San Francisco nearly opposite Albatross Island and designated on the accompanying map as "Point San Jose Reserve" and running back so as to include the barren sand hills some eight hundred yards, more or less, south of the northern extremity of said "Point San Jose" with all and singular hereditaments and appurtenances thereunto belonging; and if in the meantime and while and until the said deed or deeds shall be executed the said Dexter R. Wright, his heirs and assigns shall and do permit and suffer the said Secretary of War, his agents and assigns, peaceably and quietly to have, hold and enjoy the same tracts of land; then this obligation to be void, or else it shall be and remain in full force and virtue.

H. W. Halleck,  
J. Wing Allen.

The endorsement on this paper is as follows:

Approved.

B. Riley,  
Brevet Brig. Gen'l., U. S. A.,  
Comm'd'g. the Dept.

Head Quarters, 10th Mil. Dept.  
April 19, 1850.

#### Appendix 12.

Letter from Brevet Major E. R. S. Canby A. A. G., to Capt. E. D. Keyes, 3rd Artillery, Commanding at the Presidio of San Francisco. #

Head Quarters 10th Mil. Dept.  
Monterey, Cal. April 19, 1850.

Captain:

It appears from the records and papers which have been submitted to the Commanding General of this Department, that on the 3rd day of April 1845, Benito Diaz petitioned to the Governor of California for a grant of the Rancho de los Lobos,



THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
530 SOUTH EAST ASIAN AVENUE  
CHICAGO, ILLINOIS 60607  
TEL. 773-936-5000  
FAX 773-936-5000  
WWW.CHEM.UCHICAGO.EDU

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except the Presidio and Fort, the boundaries of which are not defined; that the said rancho was granted to the said Diaz by Governor Pio Pico on the 25th day of June 1846, and possession given on the 6th October, 1846, by the Chief magistrate of San Francisco; that the U. S. troops are, and have been since the early part of 1847 in possession of said presidio and fort under a stipulation signed by "R. B. Mason, Col. 1st. Dragoons and Governor of California, that the possession of the United States will not operate to the

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# Enclosure No. 4 -- 120 R. (A. G. O.) 1850.  
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prejudice of any just claim to said property; " that Dexter R. Wright, the present owner of the said grant, in order to definitely settle the question of the boundaries of the said Presidio and Fort has entered into bonds to quit claim to the Secretary of War of the United States all his right and title to the land described and marked in the accompanying paper and map as the "Presidio and Fort Reserves" and the "Point San Jose reserve" as selected and recommended by the Commission of Engineer and Naval Officers, for government purposes, on condition that the U. S. forces withdraw all control, occupation and military possession of the portion of said rancho not included in said "reserves".

The commanding general therefore directs that the military forces under his command immediately withdraw all control, occupation, and military possession of so much of said Rancho de los Lobos as is not included in said "Reserves", permitting the owner of said grant to resume the possession from which he was removed by the military commandant of the Presidio, of so much of said Rancho as is not included in said "Reserves" and that they occupy and hold possession in the name of the U. S. and to the exclusion of all other persons, of the land, hereditaments and appurtenances belonging to the said "reserves" of the Presidio and Fort and of Point San Jose.

Very respectfully, your ob't serv't.

Ed. R. S. Canby  
Ass't. Adj't. Gen'l.

Capt. E. D. Keyes,  
3d Artillery, Commanding, &c.  
San Francisco, Cal.

#### Appendix 13.

Post Order issued by Capt. E. D. Keyes, 3d Artillery, commanding at the Presidio of San Francisco, relinquishing control, occupation (sic), and military possession of the Rancho de los Lobos, except the Presidio and Fort tracts and Point San Jose as described in Wright's bond to the Secretary of War. #

Presidio of San Francisco, Cal.  
April 27, 1850.

Orders )  
No. 13 )

In accordance with the instructions of Brgdr. General B. H. Riley, Commdg. the 10th Mil. Department, the Commdg.

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officer of the Post of San Francisco, hereby withdraws all control, occupation and military possession of all that portion of land heretofore known as the Presidio Reserve, which lies to the eastward of a line parallel to Larkin Street in San Francisco, which line runs from a stake on the crest of the high hill south-east of the Presidio, and along the second valley

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# Enclosure No. 24 -- 744, G. R. 1871.  
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to the east to low-water mark with the exception of Point San Jose. The military possession and control of Point San Jose as delineated on the map accompanying said instructions being still retained.

In like manner all control, occupation and military possession are withdrawn from all that portion of the land to the southward of a line through the same stake to the centre of the pond S. W. of the Presidio and from the centre of the pond along the outlet of the same to the sea.

The troops of this command will therefore in future abstain from all control occupation and military possession of the lands known as the Presidio Reserve to the east-ward and southward of the lands known as the Presidio Reserve to the east-ward and southward of said lines with the exception of Point San Jose, and all persons who have heretofore held possession or occupancy of any portion of the Presidio Reserve by authority or permission of the present Commander of the Post are hereby notified, that all rights to hold possession and occupancy, under such authority ceases from and after this date.

By order of Captain Keyes:

C. Smith,  
Second Lieutenant and Adjutant.

Appendix 14.

Letter from Bvt. Brig. Genl. B. Riley, Commanding the 10th Military Department, to the Adjutant General of the Army, sending a copy of Wright's bond; concurring in opinion of the Joint commission of Navy and Engineer officers, and of the Engineer Officer on his staff, that the arrangement with Wright secures to the U. S. all the lands required for military purposes on the south side of entrance to San Francisco Bay, and recommending approval by the Secretary of War. The Secretary of War (G. W. Crawford) disapproves. #

Head Quarters 10th Mil. Dept.  
Monterey, Cal., April 28, 1850.

General:

I have the honor to transmit herewith for the information and action of the Secretary of War, a copy of an agreement made with Mr. D. R. Wright of San Francisco, the present proprietor of the Rancho de los Lobos, on which are situated the Presidio Reservations near

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# 120 R. (A. G. O. ) 1850.  
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THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
530 SOUTH EAST ASIAN AVENUE  
CHICAGO, ILLINOIS 60607-7070  
TEL: (773) 835-3121 FAX: (773) 835-3122

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DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
530 SOUTH EAST ASIAN AVENUE  
CHICAGO, ILLINOIS 60607-7070  
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San Francisco.

As the title to this grant is fully discussed in the report submitted by Bvt. Brig. Gen. Mason on the 13th of April, 1849, and the nature of the arrangement with Mr. Wright is fully explained by the accompanying papers (Nos 1 to 4 inclusive) I deem it unnecessary to say more than to express my entire concurrence in the opinions given by the Joint Board of Army and Naval Officers and the Engineer Officer attached to these Head Quarters, that the arrangement with Mr. Wright secures to the United States all the land that will ever be required for military purposes on the south side of the entrance of the Bay of San Francisco.

In order therefore that the title to these reservations may be secured without recourse to litigation, I respectfully recommend that the arrangements made with Mr. Wright be approved by the Secretary of War.

Very respectfully General  
Your ob'd't. serv't.,  
B. Riley,  
Bvt. Brig. Gen. U. S. A.  
Commdg. the Dept.

Major Genl. R. Jones,  
Adjutant General U. S. A.  
Washington, D. C.

The above letter is endorsed as follows:

The agreement is disapproved.

The acceptance of a quit-claim to a parcel of land now, as I think, rightfully in the possession of the U. States might hereafter prejudice the right of the Government to the remainder of the freehold embraced in the "Diaz" grant.

G. W. C.

#### Appendix 15.

Post Order issued at the Presidio of San Francisco, May 17th, 1850, directing that a Cannon be erected at the S. E. corner of the Presidio Reserve, in the place of the Stake referred to in Wright's bond. #

Presidio of San Francisco, Cal.,  
17th May, 1850.

Orders )  
No. 14. )

First Lieutenant Lendrum, will this day take charge of a party and attend in person to erecting a cannon in the ground at the south-easternmost angle of the Presidio Reserve. The cannon will be set with the muzzle down and at the stake pointed out by the commanding officer, being the same as that planted the April, 1850, in the presence of Captain E. D. Keyes, Brevet Captain Halleck, and Mr. Merrifield.

By order of Captain Keyes:  
C. Smith,  
Second Lieutenant and Adjutant.



1911

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
CHICAGO, ILL.  
JANUARY 1, 1911  
TO THE EDITOR OF THE JOURNAL OF THE AMERICAN CHEMICAL SOCIETY  
I have the honor to acknowledge the receipt of your letter of the 28th  
inst. and in reply to inform you that the same has been forwarded  
to the proper authorities for their consideration.

Very respectfully,  
J. H. MANN

JOHN H. MANN  
Professor of Chemistry  
The University of Chicago

(Signature)

Enclosed is a copy of the letter of the 28th inst.

and a copy of the letter of the 29th inst.

Very truly yours,  
J. H. MANN

(Signature)

(Signature)

(Signature)

(Signature)

(Signature)

(Signature)

(Signature)

(Signature)

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# From letter from Gen. McDowell to the Commissioner of the  
General Land office of Jan. 9, 1879.

Appendix 16.

Extract from an Order of the President of the United States reserving from sale for public purposes, certain tracts of land in the State of California. #

This Order contains a description of the First Presidio Reservation, or the Reservation of Nov. 6, 1850.

The President of the United States exempts and reserves from sale, for public purposes, the following tracts or parcels of land in the State of California.

In the Bay of San Francisco, California.

1st. From a point 800 yards south of Point Jose to the southern boundary of the Presidio, along the southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos.

. . . . .

(Signed) Millard Fillmore.

Washington, November 6, 1850.

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# S. 5789 No. 4, California Land papers.  
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Appendix 17.

Letter from the Engineer Department to the Senior Member of the Joint Commission of Navy and Engineer Officers for the examination of the Pacific Coast. #

Engineer Department,  
Washington, Oct. 25, 1851.

Sir:

I enclose herewith for your examination, a letter from the Acting Commissioner of the General Land Office, transmitting copy of a letter, under date of the 7th of August last from the Surveyor General of California -- the latter asking for some explanations, which you are requested to give, to enable him to run the lines of certain reservations recommended by the Joint Board in California.

Having learned unofficially that a modification of the first reservation, viz: that on the south side of San Francisco Bay, had been thought admissible by the Joint Board, subsequently to their original action, this Department wishes to learn what steps were taken therein by the Board, and what are the modified limits of the reser-

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# Engineer Book No. 19, page 91.  
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vation mentioned.

Very respectfully, your obedient servant,

Fred. A. Smith,  
Capt. Engrs., Acting Chief Engineer.

Bvt. Col. John L. Smith, Corps of Engineers,  
Presd't. Joint Board Examination of Pacific Coast, Washington.

-oOo-

Appendix 18.

Letter from Col. John L. Smith, Senior member Joint Commission of Navy and Engineer officers, in reply to a letter from the Chief of Engineers, dated Oct. 25, 1851. #

This letter from Col. Smith contains a description of the Presidio Reserve which was afterwards adopted in the President's Order of Dec. 31, 1851.

Washington, October 27, 1851.

Gen'l. J. G. Totten, Ch'f. Engineer,  
City of Washington.

Sir:

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# B. 5466 No. 6, California Land papers.  
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In answer to the letter of the Engineer Department of the 25 inst. just received relative to lands to be reserved for public uses in California, I have to state that the Joint Commission of Navy and Engineer Officers had informed Gen'l. Riley, thro' Capt. Halleck, that a modification of the boundaries of sites for fortifications on the south side of the entrance to the Bay of San Francisco, conformably to his suggestion would not impair their fitness, viz: to include the promontory of Point Jose within boundaries not less than 800 yds. from its northern extremity, and the land north of a line running in a westerly direction from the South Eastern boundary of the Presidio to the Southern-extremity of a pond lying between Fort Point and Point Lobos and East of a line passing through the middle of the said pond and its outlet to the channel of entrance.

. . . . .

The drawing upon which the modified boundaries were submitted for the opinion of the Joint Commission, was returned to Capt. Halleck.

I am, sir, very resp'y., your ob't. serv.,

John L. Smith,  
Col. by brevet & Senior Member Joint Commission.

Appendix 19.

Letter from the Secretary of W'r to the Secretary of the Interior transmitting the Order of the President of Dec. 31, 1851, reducing the Presidio and Fort reservation at San Francisco, Cal.

CHICAGO, ILL., 1900

TO THE EDITOR OF THE

CHICAGO TRIBUNE

SIR:

DEAR SIR:

I have the honor to

acknowledge the receipt of your letter of the 10th inst.

and in reply to inform you that the same has been forwarded to the proper authorities.

I am, Sir, very respectfully,

Yours very truly,

J. H. H.

Very truly yours,  
J. H. H.

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities. I am, Sir, very respectfully, Yours very truly, J. H. H.

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities. I am, Sir, very respectfully, Yours very truly, J. H. H.

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities. I am, Sir, very respectfully, Yours very truly, J. H. H.

Abstract of title, etc., cont'd.

Enclosed is a letter from the Chief of Engineers recommending the reduction as made, and describing the new boundaries; also a conjectural plat of the same. #

Notes.

The plat does not agree with the description of the southern boundary. These papers remained in the office of the Secretary of the Interior until the 17th Jan., 1855, when they were sent to the Commissioner of the General Land Office.

War Department,  
Washington, January 5, 1852.

Sir:

I enclose herewith an order of the President dated the 31st ultimo, altering the limits of the reservation at Fort Point and Point Jose, San Francisco Harbor, California.

The report of the Chief Engineer, herewith transmitted contains a plat of the tract and Capt. Halleck will, if called upon, furnish

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# C. 5100. No. 1 -- Fort Point and Presidio papers.  
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sketches, which will enable the Surveyor General to run the lines in conformity with the description.

Very respectfully, your ob'd't. serv't.,  
C. M. Conrad,  
Secretary of War.

Hon. A. H. H. Stewart,  
Secretary of the Interior.

(Endorsement.)

Department of the Interior,  
January 17, 1855.

These papers having been accidentally overlooked are now respectfully referred to the Commissioner of the General Land Office.

Geo. C. Whiting,  
Chief Clerk.

(Enclosure.)

The reservation including Fort Point, Point Jose and the Presidio at the entrance of the Harbor of San Francisco California, made by an order dated November 6th, 1850, is hereby modified and reduced so as to embrace on the following described two tracts of land viz:

1st. The promontory of Point Jose within not less than eight hundred yards from its northern extremity.

2nd. The Presidio tract and Fort Point embracing all the land north of a line running in a westerly direction from the south eastern corner of the Presidio tract to the south-



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THE UNIVERSITY OF CHICAGO  
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ern extremity of a pond lying between Fort Point and Point Lobos, and passing through the middle of said pond and its outlet to the channel of entrance from the Ocean.

Millard Fillmore.

Executive Mansion,  
Washington, Dec. 31, 1851.

(Enclosure.)

Engineer Department #  
Washington, 28th October, 1851.

Sir:

The Surveyor General of California having applied through the Commissioner of the General Land Office, for some additional instructions, to enable him to run the lines of the lands proposed as Government reservations by the Joint Board of Navy and Engineer Officers, lately on that coast, his

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# Sec. War. Book 7, page 99.  
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application therefor has been referred to this Department.

It thus appears that some of these reservations have not yet been surveyed, and on referring the subject above mentioned to the Engineer officers of that Board it would seem desirable to change the limits of one of the reservations for those originally proposed by the Board.

This reservation at first recommended, and as directed by the President to be made, was defined as follows:

"From a point eight hundred yards south of Point Jose to the southern boundary of the Presidio, along that southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos."

Subsequently to this action of the Board a private claimant to all this tract proposed to the Joint Board through Captain Halleck, Engineers, to substitute the following bounds for those just mentioned with the understanding that if accepted by the Government the claimant would resign all pretension to title within the reservation as thus modified, viz:

The Government to reserve the promontory of Point Jose, within boundaries not less than eight hundred yards from its northern extremity, and the land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and north and east of a line passing through the middle of said pond and its outlet to the channel of entrance from the ocean.

These two tracts were thought by the Joint Board to be sufficient for the use of the Government, instead of the larger one before described, and they so stated in writing to Captain Halleck.





Abstract of title, etc., cont'd.

This Department is of the same opinion, and believing that the interests of the Government would be subserved, and complication avoided, by making the two separate reservations, with the limits as last mentioned, recommends that the reservations be made accordingly.

No plat of the Presidio tract is on file in this office, and it is respectfully suggested that the Surveyor General of California be referred to Captain Halleck, Corps of Engineers, at San Francisco, for sketches which will enable him to run the lines in conformity with the foregoing description.

The sketch herewith shows the reserve as originally proposed and conjecturally drawn by the Board, also the two separate reservations now proposed to be substituted for it.

I have the honor to be, very respectfully, your obedient servant,

Jos. G. Totten,  
Bvt. Brig. Gen. & Col. Eng'rs.

Hon. C. M. Conrad,  
Secretary of War.

Appendix 20.

Letter from the Commissioner of the General Land Office to the Acting Surveyor General of California, May 7, 1853, transmitting copy of a letter from the Engineer Department relating to the Presidio Reservation dated the 25th April 1853, and the plat accompanying said letter.

(The plat is a copy of the "Dexter R. Wright map," or the map which was attached to Dexter R. Wright's bond to the Secretary of War of April 5, 1850.)

General Land Office,  
May 7, 1853.

Sam'l. D. King, Esq.,  
Act'g. Sur. Gen'l.  
San Francisco, California.

Sir:-

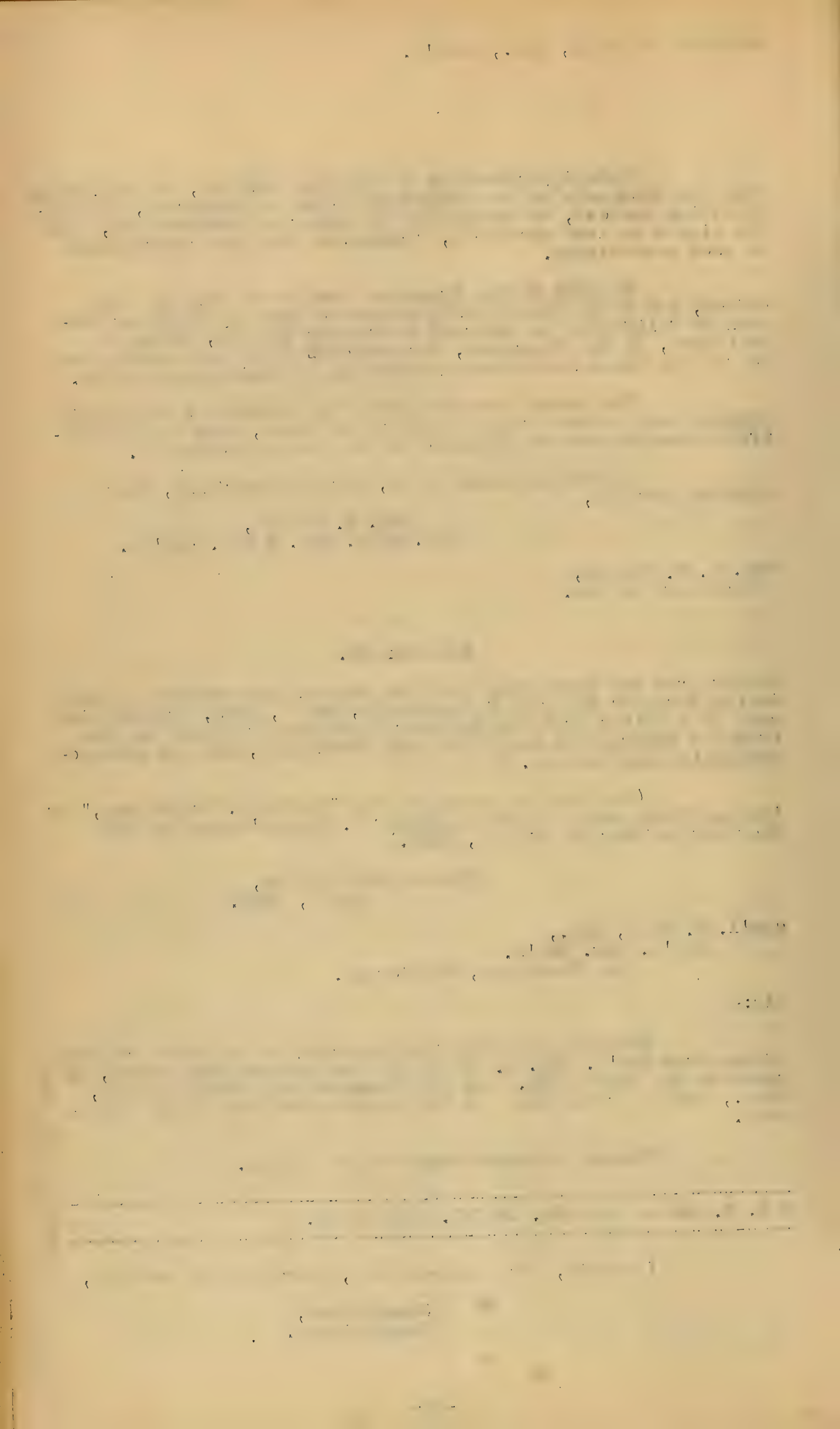
Herewith you will receive a copy of a letter to this office from Gen'l. Jos. G. Totten of the Engineer Department, in relation to Reserve No. 1 at the Presidio near San Francisco, Cala., with a traced copy of the plat transmitted by him therewith.

Please to acknowledge receipt hereof.

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# S. W. 849 -- with No. 19 Cal. Land Files.  
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I remain, very respectfully, your obedient servant,

John Wilson,  
Commissioner.



(Enclosure.)

Engineer Department, /  
Washington, April, 25, 1853.

John Wilson, Esq.,  
Commissioner of the General Land Office,  
Washington.

Sir:-

In reply to your letter of the 19th inst., referring to reserve No. 1 at the Presidio near San Francisco, California, I have to inform you that it appears from the records of the War Department that the President, on the 31st of December, 1851, modified his order, dated November 6th, 1850, in relation to reservation of lands at the entrance of the harbor of San Francisco, California, including Fort Point, Point Jose, and the Presidio, so as to embrace only the following described two tracts of land, viz:

" 1. The promontory of Point Jose

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/ Misc. Letter Book No. 18, p. 76.  
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within boundaries not less than 800 yards from its northern extremity.

" 2. The Presidio tract and Fort Point embracing all the land north of a line running in a westerly direction from the south eastern corner of the Presidio tract, to the southern extremity of a pond lying between Fort Point and Point Lobos and passing through the middle of said pond and its outlet to the channel of entrance from the ocean."

The original order of the President from the record of which the above has been copied, is understood to have been transmitted to your office.

I am &c.,

Jos. G. Totten,  
B. Brig. Gen'l. & Col. Eng'rs.

P. S. I enclose herewith a traced copy of the plat witnessed by Lieut. H. W. Halleck, of the Corps of Engineers, exhibiting the desired reservation as modified by the President's order of December 31st, 1851 - and as to which Lieut. Halleck, who is now in San Francisco will afford the Surveyor General any additional information he may desire.

J. G. T.

Appendix 21.

Letter from T. R. Brooks, Civil Engineer to Gen'l. McDowell, stating that he made a survey of the southern boundary of the Presidio Reservation on the 30th July, 1872 (1862).

San Francisco, July 16, 1866.

Bvt. Lt. Col. Wm. Neil Dennison, U. S. A. A. D. C.





Sir:

In reply to your communication of the 14th instant, I have the honor to state:

1st. I did make a survey of the southern boundary line of the Presidio Military Reservation from the eastern boundary of the same, to and across "Mountain Lake", to the mouth of the tunnel on the 30th day of July 1862.

2nd. The survey was made by direction of Edward F. Beale, then U. S. Surveyor General.

4th. I did file in the office of the U. S. Surveyor General a copy of the map of the survey with the date, and as soon after the survey was completed as the map

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# Enclosure No. 3 -- 622 P. (A. G. O.) 1866.  
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could be prepared.

5th. The map shown by me on Saturday was the same one I filed as above.

I have the honor to be, very respectfully, your obedient servant,

Thaddeus R. Brooks,  
Civil Engineer.

Appendix 22.

Letter from Gen. H. W. Halleck, to the Adj't. Gen'l. of the Army, dated Oct. 13, 1866, stating that the southeast corner of the Presidio Reservation according to Brook's Survey, was the same as the one established in the early part of 1850 by the Joint Board of Army and Navy Officers. #

Head Quarters, Military Division of the Pacific,  
San Francisco, Cal., October 13, 1866.

To the Adjutant General of the Army,  
Washington, D. C.

General:

I return herewith your letter of

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# Enclosure No. 1 -- 622 P. (A. G. O.) 1866.  
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June 2, 1866, in regard to Mr. Brook's survey of the Presidio Reserve in 1862 with indorsements with the original map of Mr. Brooks' survey and letters of Mr. Brooks, former deputy surveyor, of Mr. Conway, chief clerk, U. S. Surveyor General's office, and of Major General McDowell.

The point of commencement of Mr. Brooks' survey was the one established in the early part of 1850 by the Joint Board of Army and Navy Officers as the southeast corner of the "pre-





Abstract of title, etc., cont'd.

sidio Reservation". The original papers and correspondence in regard to the reduction of the boundaries of the "reservation" at that time ought to be found on file in Washington. The copies here are mostly unauthenticated and unofficial.

General McDowell has been absent most of the time since the date of his letter, July 26, 1866. It is possible that a further search in the various offices here may throw more light upon the matter; if so I will make a further report hereafter.

Very respectfully, your obedient servant,

H. W. Halleck,  
Major General Commanding.

Appendix 23.

Extract from a letter from General E. O. C. Ord, commanding the Department of California, to the Surveyor General of California, dated Nov. 5, 1868, stating that the south east corner of the Presidio Reservation in the Brooks' survey, was at the place where the cannon was planted by Capt. Keyes, May 17, 1850. #

Headquarters Dept. of Cal.  
San Francisco, Cal. Nov. 5, 1868.

Hon. Sherman Day,  
U. S. Sur. Gen. State of California.

. . . . .

This recommendation of a survey to accord with the description given and repeated in the proclamation, seems never to have been acted on, though a survey was made by T. R. Brooks in 1862, and filed in the Surveyor General's office of the southern boundary of the Reserve which survey started that line from the point where the Cannon was planted and a copy of which is appended to the survey

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# From Gen. McDowell's letter to the Commissioner of the General Land Office, January 9, 1879.  
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(marked "C",). Yet the late Surveyor General seems to have preferred to run the lines, as per Stratton's survey, in accordance with a suppositious point on a conjectural sketch and in violation of the spirit and letter of the President's proclamation. I have had a correct survey made of the southern line of the Presidio Reservation by an officer of the United States Engineers, -- Lieutenant Wheeler -- who makes oath that he started that line from a point, designated to him by E. D. Keyes as the point where the cannon was planted that marked the spot selected as the south-eastern corner of the Presidio Reservation, by the Board of Army and Navy Officers, (and which I have shown was formally confirmed by the President's proclamation), and the point shown him by Milo Hoadley, Deputy Surveyor of the City and County at the time.

Lieutenant Wheeler's survey is herewith inclosed, (and marked "C",) and appended to it is a survey of the same southerly line by T. R. Brooks. They both show that the United



States would be deprived of a large, valuable, and, for the defense of the city, important part of the Reserve, as fixed by the President, if the southern and eastern lines of James T. Stratton's survey of the Presidio Reserve were confirmed.

I am sir, respectfully, your obedient servant,

E. O. C. Ord,  
Brig. ant Bvt. Maj. Gen. U. S. Army.

Appendix 24.

Certificate of Gen'l. E. D. Keyes, concerning the planting of a cannon at the S. E. corner of the Presidio Reserve in the Spring of 1850. #

San Francisco, Feb. 24, 1870.

Major General Thomas,

Dear Sir:

I enclose herewith a statement made by Gen'l. Keyes as to the location of the Presidio Reservation together with maps having reference to the same.

. . . . .

With great respect,  
Yours very faithfully,

L. F. Loveland.

Having been called upon to make a statement in reference to taking possession of the Presidio

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# Enclosure No. 38, 744, G. R. 1871.  
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Reservation (in the City of San Francisco) and the eastern boundary of the same, I give the following to the best of my recollection.

In the year 1849, being then a Captain in the U. S. 3d Artillery, I was in command of the Post of San Francisco, and had charge of the Presidio Reservation; that reservation then extended eastward so as to embrace what was called "La Laguna". I was aware at the same time that there were claimants to two leagues of land in that quarter, called the Benito Diaz claim, from which the Presidio Reservation, was in terms as I was told, encamped.

In the Spring of 1850, I think in the month of May, Brig. Gen'l. Riley, commanding the 10th Military Department, and having his Head Quarters at Monterey, sent me orders to turn over to Dexter R. Wright, who I understood represented the claimants to the Diaz grant, a large extent of the land which had previously constituted the Presidio Reservation.

In accordance with Gen'l. Riley's instructions, I proceeded to plant an old cannon at a point on the Hill, within a few feet of what is now the N. E. corner of the fence sur-





rounding the Lone Mountain Cemetery. From the Cannon so planted I laid off lines to the Bay and Ocean to bound what is now the Presidio Reservation, and immediately thereafter issued orders directing the troops to withdraw control of all lands outside of said lines. The line running northerly from the Cannon, was if I remember right defined to run "northerly and parallel to Larkin Street, San Francisco; I am certain that my intention was that the line should run aprallel with Larkin Street, and a fence was put up on or near that line shortly after; the fence remained on the same line when I last saw it about eight months ago.

I do not consider that any of the lands lying to the eastward of a line parallel with Larkin Street, running from the point where I planted the Cannon to the Bay, constitute a portion of the Presidio Reservation. Who the owners or claimants of those lands are, I do not know.

Respectfully submitted,

E. D. Keyes.

Note.- The N. E. corner of the Lone Mountain Cemetery is the S. E. corner of the Presidio tract. (See appendix 35.)

Appendix 25.

Letter from Lieut. George M. Wheeler, Corps of Engineers, to the Assistant Adjutant General Department of California, dated July 11, 1870, transmitting the map of his survey of the Presidio Reservation. #

Engineer Office,  
Headquarters, Department of California,  
San Francisco, Cal., July 11, 1870.

Col. John P. Sherburne, A. A. G.

Headquarters, Department of California,  
San Francisco, Cal.

Sir:

I have the honor to forward herewith two lithographed copies of the late detailed survey of the Military Reservation at Presidio of San Francisco, Cal., made in accordance with instructions contained in Special Orders No. 22, Headquarters Department of California, February 3, 1870, also two copies of a map showing on an enlarged scale a plan of the Government buildings at the Presidio.

Great care has been exercised in the field work which has been conducted by and under the direction of Lieut. R. H. Savage, U. S.

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# W. 552 -- No. 18, Presidio Papers.  
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Engineers, especially in the accuracy of the survey along the southern line, from the southeast corner to the mouth of Lobos Creek on the ocean beach, upon which line the limits of the reservation are based, as will be seen by referring to a letter from Joseph G. Totten, Brevet Brigadier General of Engineers,





to the Hon. C. M. Conrad, Secretary of War, October 28, 1851, containing recommendations upon which the President's order of December 31, 1851, was based for the changing of the reservation, as ordered to be set aside by Executive authority, November 6, 1850.

The description is somewhat vague as regards that part of the boundary which traverses Mountain Lake. The words describing the limits are as follows:

"The land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and north and east of a line passing through the middle of said pond and its outlet to the channel of entrance from the ocean."

The southeast corner was located under my direction in 1868, and at a point designated and sworn to by E. D. Keyes and Milo Hoadley, and the point so determined has been considered as the initial point of the present survey.

The middle point of a lake may be looked upon as a point of doubtful locality, if it had been referred to as the centre point of the surface of the lake at ordinary low water, its position might be determined with more accuracy.

To follow, as far as possible, what is supposed to have been the true spirit of the description, the point midway on a meridian line through the most southerly point has been taken and the line joining the southern and this point in connection with the line from the middle point, so assumed, to the outlet of the lake are taken as that part of the southern boundary line that traverses "Mountain Lake", so called.

The outlet to this lake has long since been closed up and the company known as the "Spring Valley Water Works" have an iron pipe running through a tunnel and following pretty generally the direction of the old outlet, as I am informed, (sic) for a distance of nearly 500 feet, coming to what first appears as the source of Lobos Creek showing itself as a small spring, thence the center of Lobos creek to the ocean is taken as the remainder of the southern boundary.

The speciality (sic) of this survey consisting in its continuation to ships channel or deep water; the curve of twenty-feet has been so assumed and this curve as taken from the U. S. Coast Survey hydrographic sheet has been joined to the present land survey. I have been unable to find any authority defining exactly what shall be used as the deep-water line; the custom of the Coast Survey has been, it is believed to limit it to 18 feet in depth.

The Statutes of the State of California recognize the 24 foot curve as the limiting line and the State has so disposed of tide lands by virtue of different legislative acts.

Since this reserve borders upon tide lands constructively claimed by the Executive portion of the State Government in California, it has been considered advisable to carry the late survey to cover as great an area as would be liable to be covered by the blocks of land in case a sale of these tide lands should be attempted by the State.





The area has been calculated to embrace both arable and marsh land lying north of the southern boundary and limited by high water line.

The principal lines of the survey have been run by Lieutenant Savage in person while Lieutenant Lyle was attending to the details of buildings and topography.

The area has been obtained by the use of the Polar Planimeter, which from repeated trials has been found to give remarkably accurate results.

It will be noticed that the supply of water on the reserve, other than that coming (sic) from Mountain Lake and Lobos Creek, is very small, while from these sources the supply can be received only from the works of the Spring Valley Water Company.

From the peculiar direction given to the southern boundary line it will appear that private parties are allowed a frontage on the southern bank of the lake, and I am informed that the land adjoining is the property of the above mentioned incorporation.

Respectfully submitted,

Geo. M. Wheeler,

Lieutenant of Engineers.

Appendix 26.

Letter from the Commissioner of the General Land Office to the Secretary of War, dated March 28, 1871, expressing his disapproval of the Stratton Survey of the Presidio of San Francisco, Cal., and giving his reasons therefor. #

Department of the Interior, General Land Office.  
Washington, D. C., March 28, 1871.

To Honorable W. W. Belknap, Secretary of War.

Sir:

This Office has received from the Department, whence the same have been referred for examination, communications from the War Department dated December 21, 1868, and January 11, 1869, covering certain papers in the case of the survey of the U. S. Military Reservation of the Presidio, executed by James T. Stratton in 1867, under contract with the U. S. Surveyor General for California, which survey your predecessor requests may be disapproved. As the result of a careful investigation of the records and files of this

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# 744 G. R. 1871.  
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office, I have the honor to state the following:

In the month of May, 1850 the Joint Board of Military and Naval Officers appointed to select sites for harbor and coast defense on the Pacific, designated the following as the





boundaries of the Military Reservation of the Presidio, viz: "Beginning at a point on the crest of the high hills south east of the Presidio, and marked by a cannon which was established in the presence of Capt. E. D. Keyes and Lieut. J. H. Lundrum U. S. Army on the 17th of May A. D. Eighteen hundred and fifty, thence running in a northerly direction parallel to Larkin street in the town of San Francisco; thence along the low-water line of said Bay and of the sea to the mouth of the outlet of the pond between Battery point and point Lobos and south west of the said Presidio; thence along the middle of said outlet and pond to the southern extremity of said pond; thence in a northeasterly direction to the point of beginning."

On the 6th day of November, 1850, the Executive reserved from sale, for public purposes, the following tract on the Bay of San Francisco, California:- "From a point 800 yards south of Point Jose to the southern boundary of the Presidio, along the southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos."

December 31, 1851, The President modified his order of November 6, 1850, so as to reduce the above described reservation to the following two tracts of land viz:

"1st. The promontory of Point Jose, within boundaries not less than eight hundred yards from its northern extremity.

2d. The Presidio tract and Fort Point, embracing all the land north of a line running in a westerly direction from the southeastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and passing through the middle of said pond and its outlet to the channel of entrance from the ocean."

As a preliminary to the survey of the Pueblo of San Francisco, it became necessary to survey the two reservations above described, and, consequently, by direction of this office, the Surveyor General of California, on the 27th day of February 1866, instructed Deputy Surveyor James T. Stratton to execute such survey upon the basis of the two Presidential orders aforesaid and a certified copy of a diagram received at this office with a communication from the War Department dated November 17, 1851. On the 25th day of April 1866, the Deputy made returns of his survey, consisting of plats, field notes and accompanying report to the Surveyor General of California who Sept. 17, 1866, approved the survey himself and forwarded returns of the survey to this office for final approval or disapproval of the Commissioner.

October 30, 1868, the Surveyor General furnished the Commanding General of the Department of California a tracing of the plat of the survey of the Pueblo, or town lands of San Francisco, confirmed by act of March 8, 1866, which survey was made in 1867 and 1868, by James T. Stratton, Deputy Surveyor, under instructions (sic) from the Surveyor-General. November 5th, 1868, Gen. E. O. C. Ord, Comdg. Dept. of California, on the part of the United States, objected and protested against the adoption and final confirmation of this survey so far as it relates to the Presidio Reservation, in that by such a survey the United States would be deprived of a large, necessary and important part of the lands intended to be reserved to it by the Proclamation of President Millard Fillmore dated December 31, 1851, and the act of Congress approved March 8, 1866.





After a careful examination of the returns of the survey executed by Deputy Stratton, the Commissioner finds General Ord's exceptions to the survey well taken, and the same cannot be approved by this office. The deputy appears to have been guided principally in the execution of his survey by the rough diagram of Reservation No. 1, heretofore referred to, and, as he disregarded the requirement of the President's order of December 31, 1851, relative to the southeastern corner of the reservation, there can be no doubt of the incorrectness of his survey. The said order reserved "all land north of a line running in a westerly direction from the southeastern corner of the Presidio tract", which corner was marked by a cannon planted in the presence of Capt. E. D. Keyes, U. S. A., of the Joint Board of Officers on the 17th day of May 1850; and, although the cannon has since been removed its original position is indisputably determined, - Capt. Keyes himself and the former Surveyor of San Francisco County, making affidavit as to its former position - the latter having often used it as an initial point in his surveys, and the former being able to fix its position from his memory and from the lines of fence running from the cannon when planted. As, therefore, the southeastern corner is known, the southern boundary of the Presidio Reservation is a line from the said corner to the southern extremity of Mountain Lake, then passing through the center of the Lake and its outlet to the channel of entrance from the ocean, and must so be established and marked in the field, a strict construction of the second order of the President requires that the eastern boundary of the reserve should run from the southeastern corner due north to the waters of the Bay. Circumstances, however, seem to render it desirable that the line of fence from the position of the cannon to the Bay on a line parallel to Larkin St. should be adopted as the eastern boundary. This line was recommended by the Joint Board in 1850, as the eastern boundary of the Presidio Tract, and it would seem that it was the intention of the Executive to carry out their recommendation in his second order but by an inadvertency, apparently this slight change in the eastern boundary was made. By Post Order No. 13, Presidio of San Francisco, Cal., April 27th, 1850, the commanding officer of the Post withdrew all control, occupation and military possession of all that portion of the presidio Reserve which lies to the eastward of the eastern boundary parallel to Larkin street.

From the correspondence that Generals Halleck and Ord, as well as from other sources, it appears that since the issuance of the above Post Order the military authorities have not occupied the tract between the above-mentioned line, which is marked by a fence erected thereon by the military authorities, and the imaginary north and south line which actually constitutes the eastern boundary; and private parties have settled upon the intervening tract and made valuable improvements thereon. In view of these facts, and, moreover, the statements of Generals Halleck and Ord to the effect that this tract is of no material importance to the Presidio Reservation, I have the honor to recommend that the necessary steps be taken to obtain an order from the President relinquishing from the reservation all that tract of land east of a line running in a north westerly direction from the south-eastern corner of the reserve in a line parallel to Larkin street, San Francisco to the Bay. The hardship of the position in which the occupants of this tract are placed, demands that some action should at once be taken with a view to placing them in possession of the lands on which they have settled in good faith and without notice by the military authorities to leave. Upon examination of the papers on file here, it is believed by this office that by such a course of action the in-





Abstract of title, etc., cont'd.

terests of the United States in the Military Reservation would not be seriously affected, while the settlers be enable to obtain title to their improvements and the land they now occupy, as a simple act of justice.

Should such a modification of the order of the Executive dated December 31, 1851, be obtained, and should there be at the disposal of the War Department any funds out of which the expense of a new survey could be paid I respectfully request that you will so advise this office in order that instructions may be issued to the Surveyor General of California to cause a new and correct survey of the southerly and easterly boundaries of the Reserve, the account for which will be forwarded to your department for liquidation, there being no appropriation under our control applicable to this purpose.

Touching the possible conflict between the lines of the proposed survey of the reservation and those of the Rancho de Agua de Figuera, I enclose herewith a copy of a letter dated the 25th inst. to the Surveyor General of California.

I have the honor to be, very respectfully,

Willis Drummond,  
Commissioner.

#### Appendix 27.

Approval and adoption by the Commissioner of the General Land Office, dated the 19th August, 1872, of the Survey by Lieut. Wheeler. #

"The above survey of the Presidio military reservation by Lieutenant George M. Wheeler, (in 1870) being in conformity with the modified President's order of December 31, 1851, is adopted as correct, and hereby approved.

"Willis Drummond,  
"Commissioner.

Department of the Interior, General Land Office, Aug. 19, 1872.

# From Gen. McDowell's letter to the Commissioner of the General Land Office, dated January 9, 1879.

#### Appendix 28.

Letter from the Secretary of the Interior to the Secretary of War, Nov. 12, 1878, communicating the approval of the Commissioner of the General Land Office, Nov. 11, 1878, of Stratton's Survey of the Pueblo of San Francisco, including the Presidio Reservation. #

Department of the Interior,  
Washington, D. C., 12 Nov., 1878.

The Hon. Secretary of War:

Sir:-

I have the honor to transmit herewith, for the information of your Department, a copy of letter of yesterday, from the Commissioner of the General Land Office, in which he





states that he has rendered a decision in the case of the survey of the "Pueblo Lands of San Francisco."

Very respectfully,

C. Schurz,  
Secretary.

(Enclosure.)

Department of the Interior, General Land Office,

-----  
# No. 4282, G. R. 1878.  
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Washington, D. C., Nov. 11, 1878.

Hon. C. Schurz,  
Secretary of the Interior.

Sir:

I have this day rendered a decision, approving in all its parts the survey of the "Pueblo Lands of San Francisco", City of San Francisco, confirmed, made by James T. Stratton, U. S. Deputy Surveyor, between March 1867 and January 1868, containing 17,754 $\frac{77}{100}$  acres, with the exception of the East boundary of the Presidio Military Reservation, which must be modified in accordance with the Act of Congress of May 9, 1876, Stats. 19, page 52, releasing a portion of said reservation to the said city.

Please advise the Honorable Secretary of War of the purport of my said decision.

Very respectfully, your ob't servant,

J. A. Williamson,  
Commissioner.

Appendix 29.

(Map) Military Reserve selected by virtue of instructions dated March 29th, 1848.  
by Capt. J. L. Folsom  
A. Q. Mt. U. S. Army.

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Appendix 30.

(Map) Copy of conjectural plat enclosed in the letter from the Chief Engineer to the Sec. of War, dated the 28th Oct. 1851.

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Appendix 31.

(Map.) Outline from Coast Survey chart, 1869, etc.  
(Presidio.)

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Appendix 32.

(Map) Presidio of San Francisco, Cal. Sketch showing the reservations of Nov. 6th 1850 and Dec. 31st, 1851.

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Appendix 33.

(Map, large fold.)  
Presidio and Fort Reserve, (cert. by Halleck).

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Appendix 34.

(Map, large fold.) Survey of the South Line of the Government Reserve. San Francisco, July 30th, 1862. (Cert. by T. R. Brooks.)

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Appendix 35.

(Map, large fold.) Map of the Northern front of the San Francisco Peninsula, from U. S. Coast Survey map showing the approaches to the City of San Francisco, Cal., 1868.



DECISION OF THE COMMISSIONER OF THE GENERAL LAND OFFICE  
MODIFYING DECISION IN RE STRATTON SURVEY.

(May 19, 1879)

U. S. Surveyor General,  
San Francisco, Cal.

Sir:

After my decision on Nov. 11th, 1878, confirming the Stratton Survey of the Pueblo lands confirmed to the City of San Francisco transmitted to you by letter of that date, an application by General McDowell, Comg. Mil. Div. of Pacific Coast, for a rehearing of the case so far as the survey relates to the Presidio reservation was allowed by me, upon the representation that such portion of the survey had been passed upon and rejected by one of my predecessors.

After due notice to the several parties interested, such rehearing has been had, and it is found that on the 28th day of March, 1871, Hon. Willis Drummond, then Commissioner of the Genl. Land Office, did consider and decide the matter of the said Stratton survey so far as related to said reservation, and did reject the same to the south and eastern boundaries thereof, and did decide that the southeast corner of said reservation was at a point marked by a cannon planted in the presence of Capt. E.D. Keyes, U.S., on the 17th day of May, 1850, and that the southern boundary of the reservation is a line from said southeast corner of the southern extremity of Mountain Lake, thence passing through the center of said lake and its outlet to the channel of entrance from the ocean, and that by a STRICT construction of the President's order, the east line of the reservation would run due north from said southeast corner to the water of the bay, but that the true intention of such order was to follow the line recommended by the joint board in 1850, to-wit, northerly from said southeast corner parallel with Larkin street in said City ~~and~~ to the water of the bay. That by military order of 27th April, 1850, the commanding officer of said post withdrew all control, occupation and military possession to the last mentioned line which was marked by a fence as the eastern boundary of said reservation, and since that date has been so recognized.

This decision which was unknown to me on the 11th of Nov. 1878, is contained in a letter addressed, not to you or other official of this Department but to the Secretary of War, and is recorded among the correspondence of a division of this office other than the one where I found the documents and papers of the case. This decision, although unknown to me as well as to those who argued the case, (including the United States Dist. Atty. for California, who appeared in behalf of the United States to protect its rights in military reservations, is, in my judgment, binding upon me, irrespective of my views as to its correctness.

In the letter containing that decision is found a statement that if the Executive will modify the order of Dec. 31, 1851, so as to make it conform in the eastern boundary to the real intention thereof (by a line parallel with Larkin St.) the Commissioner will instruct the Surveyor General to cause a new survey of the southerly and easterly boundaries of that reservation, provided the War Department would supply the funds.



1. The first of these is the fact that the  
2. second of these is the fact that the  
3. third of these is the fact that the  
4. fourth of these is the fact that the  
5. fifth of these is the fact that the  
6. sixth of these is the fact that the  
7. seventh of these is the fact that the  
8. eighth of these is the fact that the  
9. ninth of these is the fact that the  
10. tenth of these is the fact that the

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To this the War Department responded by presenting to this office an independent survey of said entire reservation made by Lt. Geo. M. Wheeler, upon which the Commissioner, on the 19th of August, 1872, indorsed an order to the effect that such survey 'being in conformity with the modified President's order of Dec. 31, 1851, is adopted as correct and hereby approved.'

That survey and plat so indorsed, was remitted to you and no record thereof left in this office, so far as I am aware. A copy certified to by you is exhibited on this rehearing.

I find on examining that survey that it does not accord with the decision, which it doubtless intended to follow, as to said eastern boundary. It bounds the reservation on the east by a line from said southeast corner due north, and not by a line parallel to Larkin St., as recommended by said joint board, and as designated by military order, occupation and monuments since 1850, and as really intended by President Fillmore in his proclamation.

There is nothing to show that the Wheeler survey was made under the direction of this office, but seems to have been made under military order without notice to other claimants, and without regard to the requirements of the statute.

Other contestants now complain that such survey was contrary to the statutes, and altogether unauthorized -- made and approved without actual or constructive notice to them, and therefore in a manner to deprive them of the right of protest, trial and appeal.

There is much force in this objection so far as the survey departs from the decision it attempts to execute. As there seems to have been no new hearing or new evidence received between the dates of the decision and the adoption of the Wheeler survey, nor any record made of such adoption in this office, it is, no doubt, an inadvertence that the decision and survey do not agree as to the eastern boundary. The decision that the eastern boundary line was really intended to be parallel with Larkin St. and had been so understood and marked for twenty years, was properly made, and must stand as against the adoption of a different survey made as aforesaid.

I therefore conclude and hold that, by the proper decision of my predecessor, the true boundary of said reservation on the south and east was by lines from said southeast corner of said reservation, where said cannon was planted; one to the southern extremity of said mountain lake, and through its center and outlet to the ocean as aforesaid, the other in a northerly direction, parallel with Larkin St., to the waters of the Bay.

This boundary on the east has been since modified by the act of Congress approved May 9th, 1876 (Vol. 19, p. 52) by the relinquishment to the City and County of San Francisco, and their assigns, of all the interest of the United States in such reservation east of the west side of Lyon St., in said City, and a point on the shore line of said Bay eighty feet west of said line, parallel with said Larkin St., "to conform as near as possible to the plan of the city map of streets of said City outside of said reservation now on file in the War Department."

A survey by Stratton of the ordinary high water line within said reservation was proper for the purpose of measuring the four leagues above high water mark, and to enable him to fix



It is the policy of the Department to maintain a close working relationship with the various agencies of the Government, and to coordinate their efforts in the execution of the laws and policies of the United States. This is particularly true in the case of the Federal Bureau of Investigation, which is the principal law enforcement agency of the Department.

The Bureau is organized into several divisions, each of which is responsible for a specific area of law enforcement. These divisions are: the Criminal Division, the Civil Rights Division, the Identification Division, the Laboratory, the Legal Coun- sel, and the Training Division.

The Criminal Division is responsible for the investigation and prosecution of crimes against the United States. It is organized into several units, each of which is responsible for a specific type of crime. These units are: the General Criminal Unit, the Organized Crime Unit, the Racketeering Unit, the Narcotics Unit, and the Firearms Unit.

The Civil Rights Division is responsible for the investigation and prosecution of crimes against the civil rights of individuals. It is organized into several units, each of which is responsible for a specific type of crime. These units are: the General Civil Rights Unit, the Voting Rights Unit, and the Fair Housing Unit.

The Identification Division is responsible for the identification of individuals and objects. It is organized into several units, each of which is responsible for a specific type of identification. These units are: the Fingerprint Unit, the Photograph Unit, and the Latent Fingerprint Unit.

The Laboratory is responsible for the scientific examination of evidence. It is organized into several units, each of which is responsible for a specific type of examination. These units are: the Chemistry Unit, the Physics Unit, the Biology Unit, and the Forensic Unit.

The Legal Coun- sel is responsible for the legal advice and representation of the Department. It is organized into several units, each of which is responsible for a specific type of legal advice. These units are: the General Legal Unit, the Criminal Law Unit, and the Civil Law Unit.

The Training Division is responsible for the training of law enforcement officers. It is organized into several units, each of which is responsible for a specific type of training. These units are: the General Training Unit, the Criminal Law Unit, and the Civil Law Unit.

The Department is committed to the highest standards of integrity and professionalism. It is dedicated to the service of the United States and its people, and to the maintenance of the rule of law.



the southern boundary of the Pueblo lands as confirmed by the decree. There was no protest against that part of the survey, except by the City. The lands within the exterior boundaries of the reservation, whether above or below high water, were not confirmed to the City, but belong to the United States for military purposes, except so far as they may belong to the State of California by common law, or under Act of Congress such as that of Sept. 28th, 1850 (Vol. 9, p.519) granting swamp and overflowed lands to the several states. I determine nothing in regard to that, except that I overrule the exceptions of the City (if it has not already been done by my predecessor) for the reason that if lands within the reservation were improperly excluded by the Stratton survey, the effect was not to deprive the city of any land, but to give it more on the south side of the grant.

Other exceptions made by the military commander to conclusions of fact found in my former decision need not be noticed here, as they are now immaterial by reason of the former decision and are unsupported by testimony sworn to as required by law in this and all civil tribunals, though further evidence in support of those conclusions is presented.

So the claim urged by private contestants upon the evidence that they paid the City large sums of money for lots in good faith, relying upon the correctness of the Stratton survey made upon consultation with the military authorities, and that the disputed territory is not required for military purposes is not considered by me since the decision of my predecessor is brought to my notice.

Suggestions of improper conduct by former subordinates in your office, or by military authorities, being wholly unsupported by proof, are sufficiently answered by silence.

My former decision confirming the entire Stratton survey is therefore modified only so far as related to the boundary of the Presidio reservation as aforesaid.

You will please notify all parties interested, of this decision upon the rehearing, and that they have sixty days therefrom in which the appeal from this, and thirty days only in which to appeal from my former decision of Nov. 11, 1878. At the expiration of said dates you will promptly report to this office the action taken.

Further instructions as to any further survey to enable this office to prepare a patent pursuant to the former decision as now modified, will be given when required.

Very respectfully, etc.,

J. A. WILLIAMSON,

Commissioner.

Indorsed:

534 Pueblo of San Francisco.

Presidio Decision, Commr. Gen'l Land Of. May 19, 1879. Received May 29, 1879. Notified parties of record to file appeals by July 28, 1879, and June 1879, in accordance with this decision.

1917



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RESOLUTION ORDERING APPEAL TO BE TAKEN

July 21, 1879.

"Resolution No. 13730 (New Series)--- Whereas, By a decision rendered May 19, 1879, by the Hon. Commissioner of the General Land Office, at Washington the former decision of that officer confirming the Stratton Survey of the Pueblo of San Francisco was so modified as to exclude from the taxable property of the City certain lands on the southern side of the Presidio Reservation; and, whereas, such lands were by said Stratton Survey-- the only authoritative United States survey hitherto at any time made of the Pueblo--included as a part of the Outside Lands of said City; and whereas, upon the faith of the said survey said City assessed said lands in common with the other Outside Lands for their proportion of the Outside Land assessments and taxes, and has ever since taxed the same as a portion of the taxable property of the City; and, whereas, the said City, upon payment into her Treasury by the claimants of said lands of all the assessments and taxes imposed upon the same, granted deeds to them therefor in the same manner as to other outside land claimants, and has ever since the issue of such deeds taxed said lands and the claimants thereof have paid such taxes; and, whereas, many persons relying upon such city deeds, have become purchasers in good faith and for valuable consideration of portions of said lands; and whereas under the circumstances, it is the duty of said City to protect her grantees, who have thus paid their moneys into her Treasury and received her deeds.

RESOLVED, That an appeal be taken by the City and County of San Francisco to the Hon. Secretary of the Interior from so much of said decision as modifies the Stratton Survey of the southern boundary of the Presidio Reservation, and that the City and County be and he is hereby authorized and instructed to perfect and prosecute said appeal; provided that in no event shall any expense, by reason of this proceeding, be entailed on the City and County of San Francisco. And the Clerk is hereby directed to advertise this resolution as required by law. In Board of Supervisors, San Francisco, July 21st, 1879.

Adopted by the following vote:

Ayes-----Supervisors Foley, Mangels Talbert, Smith, Acheson, Scott, Haight, Brickeveded.

Noes----- Supervisors Danforth, Rountree.

Excused from voting.--- Supervisors Farren, Gibbs.

JOHN A. RUSSELL, Clerk.

(Examiner, Tuesday July 29, 1879. Vol. XXIX No. 24. p. 4, Col. 5.)





RESOLUTION NO. 14,293.

(DECEMBER 29, 1879.)

"Resolved, That in the opinion of this Board the Stratton survey of said pueblo is the only legal and proper definition of the boundaries, and that the boundaries as established by said survey should be finally confirmed by the Interior Department;

"Resolved, That the Secretary of the Interior, before whom the matter relating to the boundaries of the pueblo decisions, which relate to the Presidio Reservation of San Francisco is now pending, be requested to take up and decide said case without further delay and that officials of this City and County be directed not to ask for further postponement of said cause on behalf of said City."

Passed December 29th, 1879.

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RESOLUTION NO. 14,361.

(January 19, 1880 ).

To the Secretary of the Interior:

Whereas, The late Board of Supervisors and the present Board have both solicited from the Department a speedy determination of the boundaries of the pueblo in the City and County of San Francisco, and an issuance of the patent at an early date, and whereas, interested parties have for years procured delays in such action, now, therefore, this Board being of opinion as expressed in Resolution No. 14,293 (new series), that the Stratton survey is correct, and that the public interests require a speedy settlement of this matter; and it having come to the knowledge of this Board that, without the knowledge or authorization of the Board a clerk has been dispatched from the office of the City and County Attorney to Washington, and who, from reports received, is not acting in the interests of this City and County; therefore;

"Resolved, That W.T. paggett has no authority to represent the City and County of San Francisco before the Interior Department in the matter of the pueblo survey of San Francisco.

"Resolved that the Mayor, or in his absence the Clerk of this Board, telegraph the preamble and this resolution to the Honorable Secretary of the Interior."

Passed January 19th, 1880.

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THE HISTORY OF THE  
CITY OF BOSTON

FROM THE FIRST SETTLEMENT TO THE PRESENT TIME

By SAMUEL JOHNSON, Esq. of the Middle Temple, Barrister at Law.  
In TWO VOLUMES.  
LONDON: Printed by J. BARNES, in Pall-mall; and by J. JOHNSON, in St. Paul's Church-yard. 1790.

THE HISTORY OF THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME, is a work of great interest and importance. It is a work which has been long and anxiously expected, and which will be found to contain a full and accurate account of the history of the city, from its first settlement to the present time. The author, Mr. Johnson, is a learned and judicious man, and his work is written in a clear and concise style, and is well adapted for the use of the public.

The first volume of the work contains the history of the city from its first settlement to the year 1630. The second volume contains the history of the city from the year 1630 to the present time. The work is divided into two parts, the first part containing the history of the city from its first settlement to the year 1630, and the second part containing the history of the city from the year 1630 to the present time.

The first part of the work is divided into three books, the first book containing the history of the city from its first settlement to the year 1630, the second book containing the history of the city from the year 1630 to the year 1680, and the third book containing the history of the city from the year 1680 to the year 1730. The second part of the work is divided into two books, the first book containing the history of the city from the year 1730 to the year 1780, and the second book containing the history of the city from the year 1780 to the present time.

The work is a valuable and interesting one, and it is well adapted for the use of the public. It is a work which has been long and anxiously expected, and which will be found to contain a full and accurate account of the history of the city, from its first settlement to the present time.

Printed by J. BARNES, in Pall-mall; and by J. JOHNSON, in St. Paul's Church-yard.

UNITED STATES LAND DEPARTMENT.

Before the Hon. Secretary of the Interior on  
Appeal from the General Land Office.

City of San Francisco, Appellant,

- vs -

United States, Appellee.

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Brief on Behalf of Appellant.

By W.C. Burnett and E.B. Drake.

1897.

(8vo pp. 10)





This brief is filed on behalf of the City of San Francisco and those claiming title by purchase therefrom. The particular cause of contest is whether the dividing line between the military reservation and the City, as established by the Surveyor General of the United States for California in 1867, shall be moved to the southward and eastward so as to conform to the lines of a private survey made by Lieutenant Wheeler in 1872.

The quantity of land in controversy is about 238 acres.

The Wheeler survey was made for the purpose of enlarging the area of the military reservation.

The Stratton survey was made to ascertain the exterior boundaries of the pueblo lands confirmed to the City and incidentally to establish the dividing line between the reservation and the city lands.

The exterior boundaries of the military reservation were defined in the modified proclamation of President Fillmore of December 31st, 1851, and the diagrams of General Totten accompanying the same.

The claim of the city was confirmed by the decree of the Circuit Court for all the lands petitioned for, with certain exceptions, among which were the parcels of land previously "reserved to public uses by the United States."

The question then is, where are the southerly and easterly boundary lines of the military reservation, as the same were fixed and determined by the President's modified proclamation? Because that proclamation is the foundation of its claim. In other words, where is the dividing line between the Presidio Military Reservation and the pueblo lands of San Francisco, as confirmed by the decree of the Circuit Court?

The controversy should, and can only be solved by the officers and departments of the Government having jurisdiction of the subject matter.

The Acts of March 3rd, 1851, and of July 1st, 1864, providing for the settlement of land titles in California embrace and control the whole question.

Section 13 of the first act provides that surveys shall be made by the Surveyor General of California, and Section 1 of the Act of July 1st, 1864, continues such power in that officer. This legislation is intended to carry out the treaty of Guadalupe Hidalgo, and the military department cannot lawfully interfere therewith.

Vide:-

United States vs. Ritchie, 17 Hon. (U.S.) 525.  
United States vs. Fremont, id.id. (U.S.) 542.  
Townsend vs. Greely, 5 Wall., 337

The essential and substantiative acts under those laws are confirmation and survey, and the identical officers who are authorized to perform these acts and determine all questions thereunder, are plainly stated.

The location and surveys of lands pertain to the Executive Department of the Government. To this point the authorities are numerous and uniform.

Vide:-

Smith vs. United States, 10 Peters, 326.





United States vs. Hanson, 16 Id. 196.

Jourdan, et al. vs. Barrett, et al., 4 How. 169.

Boggs vs. Merced Mining Co., 14 Cal. 279.

In the case of Jourdan vs. Barrett, ut supra, the Court distinctly held that an authorized survey by one of the claimants did not confer upon him any additional rights; and so we say here that the unauthorized survey by Lieutenant Wheeler adds nothing to the area of the military reservation, nor can it change the boundaries as determined by the U.S. Surveyor General.

In truth, and in law, any interference by the military authorities (without jurisdiction) to the injury of the pueblo and purchasers of lands under that title, is in conflict with Art. V., Sec. XI of the Constitution of the United States, which provides that no person shall be deprived of property without due process of law.

We shall therefore contend that the "Stratton Survey" was lawfully made pursuant to law.

The Acts of March 3d, 1851, and July 1st, 1864, are the only laws on the subject, and all proceedings, including surveys, were necessarily taken thereunder.

The City of San Francisco was the owner of four square leagues, derived under the title of the former pueblo of that name. She has prosecuted these proceedings in good faith for the confirmation of her title and survey of the lands held thereunder.

The Circuit Court confirmed to four square leagues with certain exceptions, among which are the parcels of lands "reserved for public uses by the United States."

The Presidio Military Reservation is, therefore, excepted from, and carved out, so to speak, of the pueblo lands confirmed to the City, and it became absolutely necessary, in making the survey, to ascertain, correctly, the exterior boundaries of the reservation, as defined in the President's modified proclamation of December, 1851.

It was indispensable that the work should be done by an officer having authority of law so to do.

The Surveyor General for California was bound, under the law, to survey the land as confirmed to the City, and in pursuance of that duty the "Stratton Survey" (now before us), was made. It is apparent that Mr. Stratton made this survey and established the dividing line between the reservation and the City, so as to give the former all the land which the proclamation of the President assigned to it, and that such line was then, satisfactory to the officers in charge thereof. What ~~was~~ more could have been done in the interest of both law and justice?

The survey thus made took the usual course in the office of the Surveyor General and no objections thereto were made or filed by the United States, or by any one representing the military authorities within the ninety days provided for by law.

So far, then, the Government, or the military authorities are concerned, they appear to have waived all objections to the "Stratton Survey" as made.

And we now submit, and respectfully claim that it has become final and binding, and is res adjudicata, so far as the Government is concerned; that it was correctly made pursuant to law; that it is the only lawful and legitimate survey in the premises, and that a patent should issue in conformity therewith.

The "Stratton Survey" was forwarded to the General Land office, and, after long and careful consideration, was confirmed by the Commissioner, undoubtedly for the reason that it had been

...the ... ..



correctly made by the proper officer.

And now it is, that the military authorities, after final official action has been taken, and after its right to be heard under the law had expired, come and insist that the "Wheeler Survey", so-called, should be adopted, so as to change the line established by the Surveyor General, and thereby give the reservation a much larger quantity of land than was authorized by the President.

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#### ORIGIN OF THE WHEELER SURVEY.

In 1850, one Benito Diaz claimed nearly all of the northern part of the peninsula of San Francisco under a forged and fraudulent Mexican grant. While the proceedings on this grant were pending before the U. S. Land Commissioners for California, and before it was adjudged to be a forgery, the United States obtained from Diaz a deed ~~conveyin~~ of conveyance for the whole of the reservation, as called for in Mr. Fillmore's first proclamation and, perhals, a little more, and an "old cannon" was planted at the south-east corner of the tract described in the deed.

Vide:-

Affidavit of Milo Hoadley, attached to Brief of E.B. Drake, heretofore filed.

This cannon was not intended to indicate, and did not indicate, the southeast corner of the reservation, as established by the President's modified proclamation of 1851.

Afterwards, as we follow the history of this matter, the Benito Diaz grant was, by the proper authorities of the Government, adjudged to be a forgery and declared to be null and void.

Right here let us remark that the Stratton survey was made to follow the exterior boundaries of the reservation as called for in the President's modified proclamation, while the Wheeler survey follows the boundaries and calls of the Benito Diaz deed.

The latter survey was completed in 1872 and it is apparent it was made for the purpose of obtaining for the reservation, if possible, the strip of land which was not included in the President's modified proclamation, but which was claimed by the military department under the forged grant of Benito Diaz.

The manner of the execution of the Wheeler survey was almost as vicious as its origin.

It appears that the War Department, after having tacitly consented to the Stratton survey for nearly five years, and having waived the legal right of objecting thereto, conceived the idea of making an independent and ex parte survey. And so an order was issued therefor. No law can be found authorizing such an order, nor can any law be cited authorizing the subsequent approval of the survey, in August 1872, by the Commissioner of the General Land Office. The proceedings appear to have been founded upon the forged title of Diaz, and to have been secretly conceived and executed wholly without authority of law. And we state the whole case when we say that the Wheeler survey, from Alpha to Omega was conceived in error, consummated without authority of law, and against justice, and that the entire transaction is coram non judice and void.

Vide:-

Mackay, et al., vs. Dillon, 4 Hon. (U.S.) 421, and authorities cited ut supra.

Congress is the sole and exclusive source of power respecting the disposition of the territory acquired from Mexico by the treaty of Guadalupe Hidalgo and it has finally provided therefor





in the Acts of March 3d, 1851, and July 1st, 1864, and the military powers of the Government cannot interfere therewith.

We therefore claim:-

FIRST. That the Stratton Survey was made, with the consent of the military department, to follow the dividing line between the reservation and the pueblo lands of the city, as called for in the President's proclamation of December, 1851, and the Tolten diagram accompanying the same.

SECONDLY. That such survey was made under the authority and in pursuance of the only Acts of Congress on the subject.

THIRDLY. That the military authorities waived their right of objecting thereto, and tacitly consented to the correctness of the same.

FOURTHLY. That the purchasers from the city of the small strip in controversy have paid their money therefor, and have paid the taxes thereon, in good faith, relying upon the legality of such survey.

FIFTHLY. That such purchasers are not land grabbers or land jumpers, but have bought and paid full value for the title of the city, believing that the reservation would be made to conform to the modified proclamation of the President, and that the Stratton survey in conformity therewith would be sustained.

SIXTHLY. That the United States and the military authorities thereof, having consented to the correctness of the Stratton survey, and having failed to appeal from or object thereto are now estopped from questioning the validity of the same.

SEVENTHLY. That in justice and equity the Stratton survey gives the reservation all the land in can possibly use for military purposes and its area need not be illegally or wrongfully enlarged.

On the other hand the Wheeler survey should be rejected for the following reasons:

FIRST. It was made without authority of law.

SECONDLY. If it is based on the first order of the President then it is erroneous because his second proclamation changed the lines and located them as they are now delineated by the Stratton survey.

THIRDLY. If it was made to conform to the calls of the Benito Diaz deed, then it is founded on fraud and forgery and should not be sustained.

FOURTHLY. It is apparent that the Wheeler survey was executed in a secret and ex parte manner, and is wholly without merit, either in law or equity, and should be rejected.

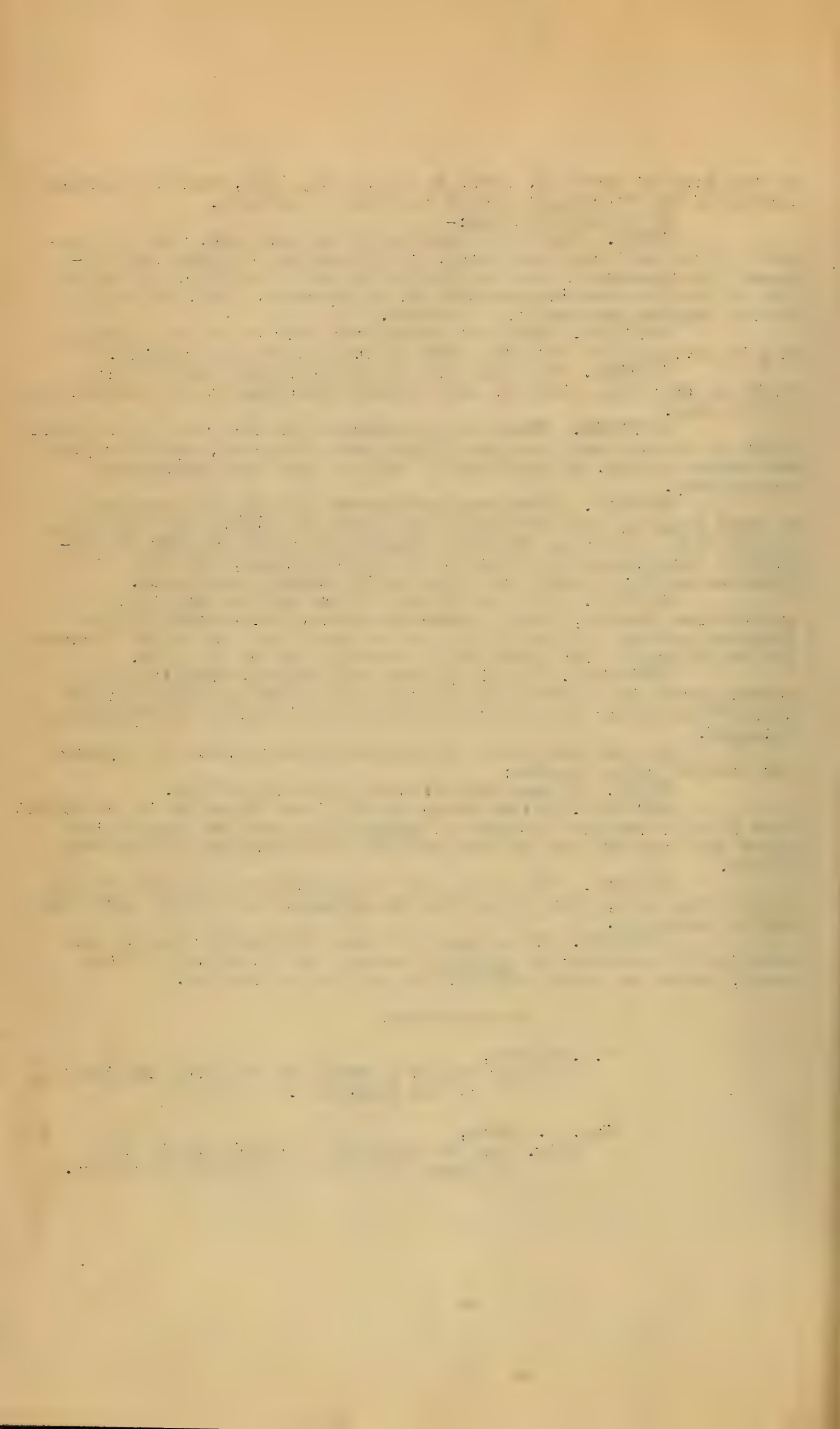
Respectfully,

W.C. Burnett,

City and County Attorney of the City and County  
of San Francisco.

Eug. B. Drake,

Atty. for 79 claimants of Pueblo Lands under  
purchase from the City of San Francisco.





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DECISION OF C. SCHURZ, SECRETARY OF THE INTERIOR,  
IN THE MATTER OF THE SURVEY OF THE PUEBLO  
LANDS OF SAN FRANCISCO.

(March 3, 1881)

Sir:

I have considered the matter of the survey of the pueblo lands confirmed to the City of San Francisco by decree of the Circuit Court of the United States for the Northern District of California, entered on the 18th day of May, 1865, upon a review of your decision of November 11, 1878, as modified by you May 19, 1879.

On the 2nd day of July, 1852, the City of San Francisco petitioned the Board of Land Commissioners for a confirmation of its claim under the Act of March 3, 1851, (9 Stats, 630), and set forth:

That the said City claims a tract or parcel of land situated in the county of San Francisco and State aforesaid, and being so much of the peninsula where the said city is located as will contain an area equal to four leagues square, said tract or parcel being bounded on the north and east by the waters of the Bay of San Francisco, on the west by the Pacific Ocean, and on the south by a due east and west line including ~~an~~ the area aforesaid.

The claim as confirmed by the Court is thus described:

The land of which confirmation is made is a tract situated within the County of San Francisco, and embracing so much of the extreme portion of the peninsula above ordinary high-water mark (as the same existed at the date of the conquest of the country, namely, the 7th of July, 1846) on which the City of San Francisco is situated as will contain an area of four square leagues, said tract being bounded on the north and east by the bay of San Francisco, on the west by the Pacific Ocean, and on the south by a due east and west line drawn so as to include the area aforesaid.

And was subject to a deduction of such parcels of land as had been reserved or dedicated to public uses by the United States, and also such parcels as had been by grants from lawful authority vested in private proprietorship, the extended parcels to be included within the area aforesaid, but excluded from the confirmation to the city.

The confirmation was:

In trust for the benefit of lot-holders under grants from the pueblo, town or city of San Francisco, or other competent authority, and as to any residue in trust for the use and benefit of the inhabitants of the city.

Had the court confirmed the claim in the descriptive language of the petition the legal effect, saving as to the excepted parcels, would have been the same, and the duties of the officers of the Government charged with the surveying of the same, as regards the exterior lines, would not have been different from what they are now, for so far as the Pacific Ocean and the Bay of San Francisco form a boundary the law would have fixed the line at ordinary high-water mark (3 Kent. 427 and 431; Angell on Tide Waters, c.3; Pollard's Lessee vs. Hagan et al., 3 How., 212; Goodtitle vs. Kibbe, 9 ib., 471; U.S. vs. Pacheco, 2 Wall., 590; Teschemacher vs. Thompson, 18 Cal. 21; people vs. Morrill, 26 Cal. 336,) and as the claim emanated from the Mexican Government, the





in any event would be that which existed at date of conquest; and, further, the confirmation would have been construed as in trust for the inhabitants of the city, the pueblo to which the city succeeded having held the title only as trustee (Townsend vs. Greeley 5 Wall., 530; Hart vs. Burnett, 15 Cal. 530; Fulton vs. Manlow, 20 ib., 450). But these matters are set at rest by the explicit language of the decree, which has become final, is conclusive between the United States and the claimant under it, and if any construction thereof is necessary, it must be governed by the ordinary rules of the common law; and, furthermore, the survey must conform to the boundaries mentioned therein, and it is the duty of the Commissioner of the General Land Office and of the Secretary of the Interior, under his appellate or supervisory authority, to see that the survey is thus made and the decree properly executed (Sections 13 and 15, Act of 1851, 9 Stats. 633, 634; Sections 1, 6, 7, Act of 1864, 13 Stats. 333, 334; Section 1, Act of 1812, 2 Stats. 716; Section 1 Act of 1836, 5 Stats., 107; Section 3, Act of 1849, 9 Stats. 395; Sec. 3, Act of 1849, 9 Stats. 395; Sec. 453, Rev. Stats.; Higuera vs. U.S. 5 Wall. 827, 828, 830, 832, 834; U.S. vs. Halleck, 1 Wall 439; U.S. vs. Billings, 2 Wall. 444; The Fossatt case, ib., 649; U.S. vs. Fossatt, 21 How., 447; U.S. vs. Sepulveda, 1 Wall. 107).

The duties of the officers charged with the execution of this decree do not appear to be changed or modified by the relinquishment and grants of the United States under the Acts of 1864 (13 Stats. 333) and 1866 (14 Stats. 4), for both Acts relinquish and grant upon certain uses and trusts, the Act of 1864 restricting the grant to natural high-water mark and the corporate limits of 1851 (Hittell, paragraphs 6, 816 to 6, 819), and making exceptions similar to those of the decree, while the Act of 1866 specially refers to the decree and confirms the claim to the city subject to the reservations and exceptions of the decree.

Survey of the claim was made by Deputy Surveyor James T Stratton between March 1867, and January, 1868, except the military reservations, which were surveyed by Mr. Stratton in 1866.

The survey and plat were approved by Surveyor General Upson, August 13, 1868, and were duly advertised in August and September of the same year, in accordance with the provisions of Section 1, Act of July 1, 1864, and were retained in the office of the Surveyor General for public inspection until the expiration of ninety days from the date of the first publication.

The approval of the survey and plat by Surveyor-General Upson prior to giving the notice required by law was unauthorized and they must be treated as if no certificate or approval were attached.

A protest against the approval of said survey, and objections thereto, in due form of law, and evidence in support of the same, were filed in time by the City and County of San Francisco. General E. O. C. Ord. as commander of the military department of California, also filed objections within the ninety days to so much of the survey as related to the Presidio military reservation with proofs in support of the same.

On the 25th of November, 1869, Surveyor General Day forwarded the official plat, and on the 14th of the following month he transmitted a copy of the field notes and other papers relating to the survey, and the objections and proofs, together with his opinion sustaining some of the objections, and holding that the plat should be amended—

- 1st. By a re-survey of the southern and eastern boundary of the Presidio.
- 2nd. By the insertion of two or three small tracts at the Mission Dolores.





3rd. By including the marsh lands within the four square leagues.

4th. By changing the southern boundary for quantity.

The case as thus presented is now before me for consideration. You found, from certain evidence filed in your office since the closing of the case before the Surveyor-General, that the City and County of San Francisco has long acquiesced in the Stratton Survey and has given both tacit and positive recognition of its correctness, and that these acts amount to a waiver of the protest and objections filed as aforesaid; and, furthermore, that the protest, not having been actively urged, was supposed to be abandoned; that the state, by certain acts of the Board of Tide Land Commissioners, without warning or opposition from the City and County, has recognized the lines of the survey and assumed to sell some portion of the land excluded, and which the City and County, under its protest and objections, claimed should have been included in the survey of the four square leagues, and that therefore estoppel may be properly urged as against the protest and objections of private claimants.

I am unable to agree with you in these conclusions. It seems to me this cause should be decided upon evidence regularly introduced before the Surveyor-General, under the provisions of the first section of the Act of 1864. This is what I think the law intends. It provides that the Commissioner of the General Land Office "may require a further report from the Surveyor-General of California touching the matters indicated by him, or proofs to be taken thereon, or may direct a new survey and plat to be made." Under this provision, if the report of the Surveyor-General had been unsatisfactory, or if further evidence were deemed necessary to a proper decision, the case could have been returned, ex parte may undoubtedly be considered as the basis of a motion for review, or in deciding whether the matter should be further heard before the Surveyor-General; but a final decision of the case, which would result in the approval of the survey, should be based upon proofs submitted in accordance with the statutory provision referred to.

In the decision of this Department of May 28, 1879 (Copp L.D. July, 1879, p. 52), in the matter of the survey of the Rancho Corte de Madera del Presidio, it was held that public notice was to be given, as required by said Act, for the purpose of notifying all persons having, or claiming to have, an interest in lands affected, or to be affected, by a survey of a private grant, "and parties allowed an opportunity to appear and file objections and submit testimony for the consideration of the Surveyor-General and of your office."

The opinion of the Surveyor-General upon evidence touching the correctness of the survey of a private land claim is of great importance, and, moreover, is required by statute, and all evidence in such matters should be produced before him for his consideration, guidance and opinion. The evidence upon which you base your conclusion does not appear to have been submitted in support of any motion of the State, or parties claiming title under her, to dismiss the protest; but, from the nature of the case, any active opposition to the conclusion of the protest, it seems to me, would necessarily come from the State, or her grantees. But in the decision of this Department above mentioned, it was held that -







If any party claiming an interest in the grant, or affected by the survey, failed to appear within the time limited, the statute does not give him any status in the case. The only status he can thereafter obtain is by leave of your office or this Department as amicus curiae.

Now, the City and County claimed certain lands that were excluded from the survey, and made the exclusion the basis of its protest and objections, which were filed under a statute of the United States, and were notice to the State of such claim. The State did not appear to object to this claim, nor to offer evidence in support of the survey, as she might have done. She therefore has no standing in the case to submit evidence for any purpose.

But if the facts considered by you as amounting to a waiver of the protest were properly before the Department, as you state them, I should hardly give them the effect that you do. The purchase by the City and County of the 30,000 feet of ground from the State, in 1875, does not appear (as the fact is stated in the decision) to have been of the land claimed by the City under the protest, and, moreover, this purchase and the stipulation in the case of the City vs. Ellis et al. were acts done in the corporate, individual capacity of the City and County, while the protest, from the very nature of the case, was filed in its fiduciary capacity, or as trustee. It is certainly true that this Department has not the power to compel a faithful performance of the trusts imposed, or to prevent the City and County from doing acts in derogation of its duties as trustee; yet it ought not to so construe any act of the City and County in its individual capacity, and not connected with the matter of this survey, as to violate the decree of confirmation or the plain intent of the granting acts above referred to. To this extent the rights of the cestui que trust may and properly should be protected.

The case is treated by parties in favor of the Stratton survey as if the United States had no interest in the matter, and hence, if the State and City are satisfied, the plain duty of the Department is to approve the survey. This is a grave error. If the excluded tracts which the City claims under the protest were above ordinary high water mark in 1846, then they ought to be included in the survey, and being so included, the southern boundary line would have to be moved north, thus excluding a corresponding quantity from the survey that would fall into the public lands of the United States. No stipulation nor agreement, therefore, between the State and the City and County can estop or relieve the officers of the Government from the duty of executing the decree or of protecting the interests of the Government; and if the City and County should ask to withdraw the protest, or to have the same dismissed, the Government would still have the right to make use of the objections and evidence filed in support thereof for its own protection, as well as for properly surveying the claim in accordance with the decree. There would be very little meaning in the ~~statute~~ statute permitting the filing of objections and evidence against a survey, and enjoining upon the Commissioner of the General Land Office the duty of requiring the Surveyor-General to follow decrees of confirmation as closely as practicable where the boundaries are specified, if there is any conclusive presumption of law that, because a survey is made by a sworn officer of the Government, it is correct and bound to be approved. But there is no such presumption. The presumption is that the surveyor has done his duty, but not that he is infallible, and his work is not binding or conclusive in any respect until finally approved, as the law provides.





There is therefore very little force in the argument that because the State of California has assumed that the survey is correct, and that it will necessarily be approved, it ought not to be disturbed. If she has made any such assumption, and sold lands claimed by the City and County, she has done so not only with the knowledge that ~~not~~ even a survey not objected to may not be approved, but in the face of objections legally presented and undisposed of, the law requiring a disposition of the objections before approval of the survey by the Commissioner of the General Land Office.

I therefore conclude that the protest and objections of the City and County of San Francisco are in force and properly before me, and they will be considered upon the evidence in the case.

Under the fifth paragraph of the protest the City and County objects to the survey, because it excludes a tract of land north and west of Brannan street, which is represented on the plat as covered by water. The protest alleges that this tract was, on the 7th of July, 1846, almost wholly a tract of overflowed land, mostly salt marsh, and hardly any of it overflowed by tide water except at spring tide, and was almost wholly above ordinary high-water mark; that the line of ordinary high-water mark was at that time on the side of the bay sharply defined by a growth of samphire, a marine reedy plant which grows down to the line of ordinary high water, and no further, and that said line of ordinary high-water mark, as it existed July 7, 1846, was the same as that laid down on the premises and defined by a blue pencil line on an engraved map of the United States Coast Survey, as surveyed by A.F. Rodgers, sub-assistant, in 1857, which map is duly marked and filed as a part of the protest.

John W. Dwinelle, who went to San Francisco in 1849, and who has since for most of the time practiced law in that city; Henry Teschemacher, who went to San Francisco in 1842, and has for the most of the time since resided there, and who was Mayor of the City in 1860, 1861, 1862 and 1863; Alfred Robinson, who went to California in 1829, and has for several years resided in San Francisco; Charles Brown, who went to reside in San Francisco in 1829, and has since been familiar with the boundaries of the peninsula; and William P. Humphreys, who went to San Francisco to reside in 1849 and has resided there ever since, and who was formerly City Surveyor, and is now City and County Surveyor; all of whom show an early knowledge of this tract, commencing about the time they respectively went to the City, have testified in this matter, and their testimony supports fully the foregoing allegations.

In addition to these witnesses, Augustus F. Rodgers testifies that since 1851 he has been stationed in California (except eighteen months between 1867 and 1869) in charge of the United States Survey of the coast thereof, including the peninsula of San Francisco; that the engraved chart or map filed with the protest was prepared and published from his surveys; and that the line laid down on that map in blue pencil from Steamboat Point around Mission Bay to Point San Quentin, and crossing Mission Creek, is, according to the best of his recollection and belief, a true delineation of the line of ordinary high-water mark as it existed when he first knew it in 1852. The other witnesses also swear, to the best of their recollection and belief, that this blue line represents the line of ordinary high-water mark at that place, and the map certainly represents most of the tract above described as above that line.





Surveyor Stratton reports that on account of the natural and artificial changes that have taken place in the water line of the City since its occupation by the Americans, in establishing the line of ordinary high water "from the Point San Jose military reservation to the mouth of Mission Creek," he was compelled to rely entirely upon the first official map of said City, made by William M. Eddy, the first City and County Surveyor. He accompanied his field notes with what he calls a "traced copy of the water-line portion of said map, certified by the present City and County Surveyor." That so-called traced copy is in the papers, and is certified thus:

I hereby certify that the blue line on this map from A to B, and thence following the line marked c, c, c, correctly represents the line of ordinary high-water mark around the City of San Francisco, as delineated on the original official maps on file in this office.

GEO. C. POTTER,  
City & County Surveyor

The certificate is dated May 28, 1867. The line marked c, c, c, is the one that represents high-water mark north and west of Brannan street, and excludes the tract in question.

It may be here remarked that this certified line does not embrace any of the tracts returned as "salt marsh" which the Stratton survey excludes, and certainly was not a guide in surveying out these parcels; and it should not be confounded with the certified "description of the lines of segregation of salt marsh and tide lands" found among the papers, and upon which Mr. Stratton relied.

You held that the evidence of the six witnesses above mentioned should hardly be allowed to overthrow an official survey made so many years before under so favorable circumstances. Undoubtedly, to approximate the line of ordinary high-water mark around the City of San Francisco, from Point San Jose to or south of Mission Creek, reliance must be had upon the early surveys, to a great extent; but it seems to me that the evidence is sufficient to cast a doubt upon the correctness of this certified line, and to put the Department upon inquiry as to whether that certificate is the best evidence the nature of the case will admit of. An examination of the lines of high-water mark delineated on the plat thus certified, will not impress one with evidences of great care and accuracy in its preparation, and although Mr. Stratton calls it a traced copy of the high-water portion of Mr. Eddy's "first official map of said City," it is not certified as a copy of any map whatever, but simply that the blue line correctly represents the line of ordinary high-water mark, as delineated on original official maps. The evidence, therefore, upon which Mr. Stratton relied for establishing this portion of the line of the confirmed claim consists mainly in this certificate.

The description of the tract in question is not sufficiently definite in the protest to admit of an accurate survey of the high-water line therein claimed, and it may be that the evidence relied on by Mr. Stratton is the best that can be now found but that it was error to survey out the two gores north and west of Brannan street seems clear to me, if there is any reliance to be placed in human testimony. But I think the question may be solved by a careful examination into the records and maps of the office of the City and County Surveyor.







By an Act of the Legislature, passed March 26, 1851, the State designated all lots within a certain specified boundary as the San Francisco beach and water lots, and granted the use and occupation of the same to the City for ninety-nine years. The beginning of this boundary was at the point where the east line of Simmons street intersected the southern boundary line of the City; thence northerly and westerly, by lines of streets, around the City to the western boundary line thereof; thence southerly along the latter line "to natural high-water mark; thence along the line of the said high-water mark to its point of intersection with the southern boundary line of said City." This line of high-water mark ran considerably south of Mission Creek, and it is longer than that certified by Mr. Potter.

The fifth session of this Act provided that the City should within thirty days after its passage deposit in the offices of the Secretary of State and the Surveyor-General, "and in the office of the Surveyor of the City of San Francisco, a correct map of said boundary line . . . distinctly and properly delineated by a red line."

That a map was made and deposited as required by this Act there can be hardly a doubt; for this boundary line is recognized in the Acts of May 1, 1851, May 18, 1853, May 1, 1855, and March 30, 1868, the latter Act referring to and recognizing "the red line water-front of Mission Bay."

I am still further confirmed in this opinion by a certified copy of this "red line map" filed by Messrs. E.R. Taylor, Jarboe & Harrison and E. J. Pringle, claiming to represent sundry lot-owners under pueblo or city titles. The certificate shows that the red line represents the boundary line of the beach and water lots described in section one of the said Act of March 26, 1851, and that it was delineated in accordance with the fifth section of said Act. The original certificate is signed by John W. Geary, Mayor, and William M. Eddy, City Surveyor, and bears date April 4, 1851. The whole is certified as a correct copy by William P. Humphreys, the present surveyor. The red line on this map, representing "natural high-water mark" shows nearly all of the tract now under consideration and all of the tract returned as salt marsh by Mr. Stratton above the mouth of Mission Creek, to be above this line.

Another map filed with you, entitled "Map of the salt marsh and tide lands and lands lying under water south of Second Street," etc. certified as correct by the Board of Tide Land Commissioners the State Board and the State Surveyor-General in 1869, has also this red line partly around Mission Bay laid down upon it, showing most of the tract in question as well as said tract of marsh land to be above high-water mark.

If these plats could be received as evidence, the objections as to these two tracts could be disposed of at once by ~~the~~ directing the Surveyor-General to make this Eddy red line map the basis of the survey around that part of the confirmed claim.

But it is sufficiently clear to my mind that such map exists and represents a line of ordinary high-water mark that has been established, sanctioned and recognized in the most solemn manner by the state and the city for years; and if this line was not actually surveyed in 1851 it must have been established from the early and most reliable surveys and is, doubtless, the best ~~xxxxxx~~ available evidence of the line of ordinary high-water mark of 1846 around that portion of the city.

You will, therefore, direct the Surveyor-General to secure a correct, authentic copy of the map designating the line of "natural high-water mark" made in accordance with the said act of March 26, 1851, and make it the basis of a survey of so much of the exterior boundary of the claim as it represents.





The ends of this line should be connected with the line of the Stratton survey 9 in case they should not coincide therewith) in such manner as to most nearly preserve the line of ordinary high-water mark, making the connection by the shortest possible lines.

The objection under the ninth paragraph of the protest need not be considered further than to remark that it will stand or fall, in whole or in part, by the establishment of the line as above directed.

Paragraphs 6, 7, and 8 of the protest relate to the following tracts of salt marsh excluded from the survey, viz: the tract above the mouth of Mission Creek, the one bordering on Islais Creek, and the one adjoining the Presidio reservation. The survey is objected to because these tracts were not included, it being alleged that they were above ordinary high-water mark July 7, 1846.

In my opinion the testimony of the above-named witnesses fully sustains the objection.

In surveying around these tracts Mr. Stratton relied mainly upon field notes certified by Mr. Potter, City and County Surveyor, thus: "The within is a description of the lines of segregation of salt marsh and tide lands in San Francisco County according to the surveys returned to the Surveyor-General." The certificate is without date, and does not show when the surveys were made, nor that they were ever approved. They could not have been early surveys. They could hardly have been made under the Act of April 28, 1855, providing for the sale of swamp and overflowed lands, because the sale of such lands within ten miles of San Francisco was prohibited by that Act. Swamp lands in the City and County of San Francisco were also excluded from the provisions of the Act of April 12, 1858, providing for the sale and reclamation of swamp and overflowed lands. If they had been made under these Acts it would be evidence of the tracts being above high-water mark. (People vs. Morrill, 26 Cal. 354.)

But the strong probability is that the surveys referred to by Mr. Potter were made under the Act of May 13, 1861. If so, the fact itself is proof that the tracts were above high-water mark in 1850. The Act provided for "the reclamation and segregation of swamp and overflowed and salt marsh and tide lands, donated to the State by Act of Congress." If these tracts had been below ordinary high-water mark they would have passed to the State by virtue of her sovereignty and not by Act of Congress. (See cases above cited as to line of high-water mark.) The Act created a board for reclaiming these lands and in Section 19 provided that county surveyors should immediately after the organization of the board "proceed to segregate" such lands "from the highlands," and make complete maps thereof within their respective counties; and the 20th section provided that one copy of the survey and map should be retained by the County Surveyor, and that another should be filed with the Surveyor-General. This is the first Act that I find making these requirements, and the language of Mr. Potter's certificate would seem to leave hardly any room to doubt that the field notes certified to were of surveys under this Act.

In the case of Rondell vs. Fay (32 Cal., 364) the Court says:

"Salt marsh" was first used to designate a class of lands belonging to the State in an Act passed May 13, 1861 (Act 1861, p. 361, sec. 27), and we understand the term as applying to a certain class of "swamp and overflowed lands" held by the State under the "Arkansas Act" of September 28, 1850 (26 Cal. 352).





Nothing is clearer to my mind than that these tracts are above the ordinary high-water mark of 1846, and they should be included in the survey as a part of the area of the four square leagues.

You will therefore direct the Surveyor-General to amend the survey accordingly.

The only question remaining for consideration is that relative to the southern boundary of the Presidio reservation. In your decision of May 19, 1879, you treat the letter of your predecessor, dated March 29, 1871, addressed to the Honorable Secretary of War, as a decision as to the southern and eastern lines of this reservation, and hold that it is binding upon you. While in my judgment that letter does not constitute a decision of the matter, it never having been announced or promulgated as such, yet I think the conclusion as to the location of the southeastern corner of the Presidio tract called for in the President's proclamation or order of 1851 is correct.

On the 6th of November, 1850, President Fillmore made a reservation for military purposes of a large tract of land at the entrance of the harbor of San Francisco, including Point San Jose, the Presidio tract and Fort Point, and on the 31st of December, 1851 he modified the same so as to reduce the reservation to the following two tracts, viz:

1st. The promontory of Point Jose boundaries of not less than eight hundred yards from its northern extremity.

2nd. The Presidio tract and Fort Point, embracing all the land north of a line running in a westerly direction from the southeastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and passing through the middle of said pond and its outlet to the channel of entrance from the ocean.

It will be observed that there is no connection between these two reservations and that they have neither lines nor monuments in common; but with the recommendation of the War Department to the President for this reduction and modification went an illustrative, conjectural sketch or diagram, representing the former reservation, and showing the difference between that and the reservations as proposed by the modification. On this sketch, in the southern line of the first reservation, a point is marked thus: "S.E. corner of Presidio, as supposed;" and from this point a line was drawn northwardly to represent the eastern boundary, the southern boundary being represented by the line of the reservation of 1850 continued. General Totten, in his letter of October 25, 1851, to the Secretary of War, submitting this sketch with the recommendation of his office (engineer's) concerning the proposed modification, states that the sketch was conjecturally drawn by the board of Army and Navy officers to show the reserve as originally proposed, "also the two separate reservations now proposed to be substituted for it." This sketch was not the result of a survey of the premises, for there was no such survey at that time, and doubtless no one at that time imagined that it would be used as the basis of a survey.

But this sketch is not referred to in the President's order in any manner, and is therefore no part of that order. The survey should undoubtedly be made from the calls in the order of reservation. The commencing point therein for the southern line is "the southeastern corner of the Presidio tract." Clearly, this contemplates a known and existing corner. This corner should have been found, and from it the southern line should have been run to







the southern extremity of the pond, and thence to the ocean by the other calls. But instead of ascertaining where this corner was located, Mr. Stratton followed the line of conjectural sketch representing the first reservation as running from a point 800 yards due south of the northern extremity of Point San Jose, in a westerly direction to the southern edge of the pond; thus establishing a corner, instead of finding ~~xxx~~ one already established. That a known corner existed at and before the date of the President's order is clear from the evidence in this case. The records of the Department of War show that this corner was established, April 3, 1850, in presence of Captain Keyes and Halleck and A.D. Merrifield, at a point on the crest of a high hill; and that Captain Keyes, per Order No. 14, marked this point, on the 17th of May, 1850, by the planting of a cannon.

General Ord filed with his protest a plat of survey of the southern line of the Presidio from the southeastern corner to the southern extremity of the pond, made by Lieutenant Wheeler in 1868, marked E, upon which are indorsed two certificates, subscribed and sworn to by Lieutenant Wheeler, in the first of which he states that he made the survey of this line from the southeastern corner, using as his initial point the spot designated to him by E.D. Keyes and Milo Hoadley; "and that the directions of the fences now existing correspond to the directions of the lines given on the survey made by T.R. Brooks, civil engineer, a plat of which is appended," and in the second affidavit or certificate that the point on the plat of his survey ("No. 1, place of commencement") is a correct representation of the point designated to him by E. D. Keyes, formerly Captain Third Artillery, and Milo Hoadley, formerly County Surveyor of the City and County of San Francisco, as the point where a brass cannon was planted in the presence of said Keyes to mark the southeastern ~~boundary~~ corner of the Presidio reservation under the direction of a board of Army and Navy officers on the 17th day of May, 1850. Certified copies of the plat and field notes of Mr. Brooks survey which was made July 30, 1862, were also filed in support of Lieutenant Wheeler's survey. General Ord also filed with his protest affidavits of General E.D. Keyes and Milo Hoadley marked C. General Keyes swears that the brass cannon was planted to mark the southeastern corner of the Presidio reservation, in his presence, May 17, 1850, "within three feet of a gate-post, which exists at the present time, where two fences meet near the corner of the Cemetery avenue and the Presidio," and that said position had been designated on the ground to Lieut. G.M. Wheeler of the Engineer Corps, as the initial point of the Presidio reservation.

Mr. Hoadley swears that he was Deputy Surveyor of San Francisco City and County during the years 1850 and 1851; that he knows the location described in the affidavit of E.D. Keyes; that the cannon remained in that position until 1856; that he had frequently used the said cannon as an initial point in making official surveys in said City and County; that from said surveys said initial point is easily recognized, and that the gate-post referred to in E.D. Keyes affidavit is within three feet of the original location of said cannon, and was pointed out by him and said Keyes to Lieut. G.M. Wheeler as such initial point. This is evidence which was submitted to the Surveyor-General within the legal period after the publication of the survey.

This it appears that at the times when both reservations were made there was a known and established southeastern corner of the Presidio tract, and when the survey was made by Mr. Stratton this point was indicated within three feet by the fences on the





eastern and southern boundary. The establishment by Mr. Stratton of a point several rods north of that corner was clearly erroneous. There was no lawful authority for his ignoring this corner and surveying a southern line within the inclosure of the reservation.

It does not follow that because it is found that Lieutenant Wheeler in making his survey used the correct starting point under the Presidential proclamation his survey is approved as an official one by this Department, but it is certainly evidence upon which a decision may properly be based.

The objection raised by parties in favor of the Stratton line against treating the Wheeler survey of 1872 as evidence is doubtless well taken; but it is not necessary to fall back upon that survey to establish the southern line of the reservation.

The Act of Congress approved May 19, 1876 (19 Stats. 52) which relinquishes from reservation on the eastern portion of the Presidio land south of Stratton's southeastern corner, has fixed the eastern line of the Presidio as the western line of Lyon ~~street~~ street, extended northwardly to the shore line of the bay; therefore the present southeastern corner of the Presidio reservation is where a direct line from Post P R No. 5 of Stratton's survey, at the southern extremity of the pond (Mountain Lake) toward the initial point of the Wheeler survey of 1868 (the point where the cannon was planted, now marked by a stone monument, intersects the west line of Lyon street, and the line between these two points connected with Stratton's line and running thence from Post P. R. 5 to the ocean constitutes the southern boundary of the Presidio military reservation, and the survey and plat should be amended accordingly.

Your decision upon the entire survey of the claim confirmed by said decree and Acts of Congress except as herein modified, is affirmed, and the papers submitted with your letters of October 8 and December 14, 1879 are herewith returned.

Very respectfully,

C. SCHURZ, Secretary.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.





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DECISIONS OF THE SECRETARY OF THE INTERIOR, DECLINING  
A REVIEW IN THE MATTER OF THE PUEBLO LANDS OF  
SAN FRANCISCO.

Department of the Interior,)   
Washington, July 12, 1883.)

THE COMMISSIONER OF THE GENERAL LAND OFFICE:

Sir:- I have considered a motion for review of the decision rendered by Mr. Secretary Schurz, March 3, 1881, in the matter of the Survey of the Pueblo Lands of San Francisco, setting aside, as to the particulars named, what is known as the Stratton survey, executed in 1867, and directing a new survey of the line of high water mark on the Bay of San Francisco, taking as a basis what is designated as the "Red Line" of the original shore, as delineated by authority of an Act of the Legislature of California, approved March 26, 1851.

The motion for review was duly presented under the permission of the Department in April, 1881, with the request that the matter of argument be left open for the consideration of whatever questions might arise in the further progress of the case, and was formally ~~review~~ renewed in September, 1882, by counsel for the parties interested in the approval of the Stratton survey, and after full oral and written argument the whole case has been regularly submitted for my decision.

Having complete jurisdiction of the case, as shown by the authorities cited on page 4, of the former decision - also McGuire vs. Tyler (1 Bl, 195 and 8 Wall, 650), Van Reynegan vs. Bolton (95 U.S. 33), Snyder vs. Sickles (98 U.S. 203), and other cases - I propose to give such direction in the matter as will lead to an intelligent execution of the survey, at the same time limiting the expression of my views to the exact points presented by the pending application.

The right to the Pueblo title and possession rests in the City of San Francisco by judicial confirmation, sanctioned and ratified by Legislative grant. (Trenouth vs. City and County of San Francisco, 100 U.S. 251.) The case just cited contains not only a clear and concise statement of this particular grant, but of the Mexican custom and law in which such title originated. The Acts of Congress referred to are those of July 1, 1864 (13 Stat. 333), and March 8, 1866 (14 Stat. 4), the latter of which released all claims of the United States upon certain trusts, and by direct reference to the decree of the Circuit Court of the United States rendered May 18, 1865, which specified the boundary calls of the grant.

The descriptive language of the decree is this: "The land of which confirmation is made, is a tract situated within the County of San Francisco, and embracing so much of the extreme upper portion of the peninsula above ordinary high-water mark (as the same existed at the date of the conquest of the country, namely the seventh of July, A.D. 1846), on which the City of San Francisco is situated as will contain an area of four square leagues- said tract being bounded on the north and east by the Bay of San Francisco on the west by the Pacific Ocean; and on the south by a due east and west line drawn so as to include the area aforesaid.

[illegible]



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All material questions relating to this boundary are, as I understand the case, now settled, except the single inquiry whether or not, in running along the line of ordinary high water mark of the ocean, and especially of the bay, the main shore or coast line of such body of water, identified by its larger description, shall be followed, cutting across the mouths of streams estuaries and creeks which, intersecting the body of the peninsula, find their entrance into the said ocean or bay; or whether such estuaries as also fall below high tide shall be segregated by following up the tide line on one side and down on the other so as to map them, as it were, as a part of the sea, and to measure only the land surface thus articulated and segregated, to obtain the area called for by the grant.

My predecessor held that the former was intended by the decree and expressed its true construction. The applicants for review adhere to and insist upon the latter interpretation.

Mission Creek, so called, running into Mission Bay, an interior part or portion of the Bay of San Francisco, presents the principal locality of the controversy, although several other streams are also affected by the tidal flow, and strips of land along their banks are, or were in 1846, submerged by the ordinary high tides. All these lands are now reclaimed and covered by the streets, blocks and buildings of the City. It is sufficient for this case to fix the meaning of the decree as to Mission Creek; for if that be excluded as a boundary, all the other streams and lesser channels will, by the same rule, fall within the exclusion.

It is broadly contended that the controlling words of the decree are those first occurring, viz: "embracing so much .... above ordinary high-water mark .... as will contain an area of four square leagues;" That this is descriptive of the lands with reference to every part and parcel of the same wherever situated and draws to itself every subsequent mention of boundary, so as to compel us to treat all the waters below high tide in any part of the peninsula as forming "arms of the sea," which must be considered as a part of the sea named for boundary, and "meandered" out for quantity, in obtaining the area which governs the location of the south line of the grant. Others concede that possibly the fact of navigability of the estuary may have some bearing, but claim that if the stream was navigable it necessarily formed a part of the bay called for, and its high tide line must be taken in surveying out the land.

To my mind both these views are extreme and at variance with the intent and language of the decree. These first words of description are of the land as "a tract", a portion of the peninsula referred to as a whole, by reference to its situation "above ordinary high water" of the surrounding ocean and bay; descriptive of the land as such "peninsula," and only intended to set out the location and situs of the grant, lying there as a portion of country within well known natural water boundaries, and rising above their ordinary lines of high tide. This peninsula was confirmed as a tract granted for municipal purposes--for the uses of a prospective and growing city, which at date of confirmation had already achieved more than its early promise. Manifestly such a grant must take whatever is inland with respect to the bodies of water surrounding it--whatever might or should attach to its municipal uses--and if traversed by a watercourse, everything not strictly belonging to the public easement, to the *jus publicum* as recognized by the law of nations, would naturally fall within the municipal right. To change or limit this natural and persuasive presumption of intent, words of clear and unmistakable import must be used; not words which may be reasonably find full interpretation in the opposite view.





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Now, when we look at the calls for boundary there is no ambiguity - no doubtful phraseology: "Said tract being bounded on the north and east by the Bay of San Francisco, on the west by the Pacific Ocean." The "tract" bounds upon the "Bay" and "Ocean" not upon estuaries, creeks and streams intersecting such tract, even though they be navigable, and technically termed "arms of the sea."

I have examined the full list of authorities cited and brought to my attention at the argument and subsequently, and have no question to raise respecting them in a case to which they apply. Those on which great stress is laid are Hunt's Law of Boundaries, 16, 17; 8th Alabama, 1 to 24; 16 Peters, 251, 266, 267; 6 Cowan 518, 540; 2 Wallace, 590; 94 U.S. 324. In all these cases the arm of the sea, or the stream itself, was the given boundary, and the only thing decided was that the title reached only to high-water mark; all beyond that resting in the rights of riparian proprietorship, subject to the public easement.

But, as before stated, this is another case. Here the boundary is not the stream, but the Bay; consequently the "ordinary high-water mark" must be the high-water mark of the shore as pertaining to the sea, and not the high-water mark of the bank as pertaining to a river or stream. So that, although Mission Creek is alleged to have been as well a tidal inflow as an outlet for the inland waters, it nevertheless falls within banks instead of resting upon shores, and must be considered an inland water for all purposes; being far within the rule laid down in *United States vs. Grush* (5 Mason 290), and clearly covered by the late case of *U.S. vs. Steam vessels* (No. 141, October term, 1882).

To the foregoing may be added the rule long since established by the United States Coast Survey, as communicated by the Superintendent under date of 8th ultimo, in response to my request for information on the subject. I subjoin his letter:

U.S. Coast and Geodetic Survey Office  
Washington, June 8, 1883.

Hon. Henry M. Teller,  
Secretary of the Interior, Washington. D.C.

Sir:-

In further illustration of the statement made by this office under date of June 5th, in answer to your letter dated May 31, 1883, concerning the practice of this office in defining the inner boundaries or outlines of bays when the same are interrupted by the mouths of estuaries, rivers or creeks, I submit the following additional statement:

This office has long since had occasion to adopt definite rules in that respect for the purpose of making estimates for projected work and giving account of work done.

The rule adopted is, to draw the line between high-water mark of the nearest points of land on each side of the interruption, in continuation of the general outline.

Thus, making use of familiar illustrations on the Atlantic Coast, the "general coast line" is measured from Point Judith to Montauk Point; from Coney Island to Sandy Hook; from Cape May to Cape Henlopen; from Cape Charles to Cape Henry. On the Pacific Coast, from Point Lobos to Point Bonita (San Francisco entrance), etc.

Descending to smaller features: in Long Island Sound, the limits of the sound are defined by measuring across the mouth of the Thames River from high-water at Eastern Point to Quinipeag Rocks; across the mouth of the Connecticut River, from high-water





mark at Griswold's Point (Lyne) to Lynde's Point (Saybrook); in Delaware Bay, across Mahon's River between the opposite points of marshes. By the same rule we define the limits of Mission Bay, near San Francisco, by drawing the line across Mission Creek over the projecting points of marsh on each side.

It appears needless to multiply illustrations, and I trust that I have succeeded in setting forth the rule and practice of this office.

Very respectfully yours,

J. E. HILGARD, Superintendent

From the foregoing it will seem, that although no suggestion was made to him as to localities, the inquiry being in the most general terms, the Superintendent has instanced this very case as illustrative of the accepted rule. It can hardly be claimed, therefore, that a call for San Francisco Bay, being a larger description than Mission Bay, will demand the inclusion of an estuary of the latter, which by the ordinary rules of boundary has been excluded from other designation than that of a mere creek flowing into the lesser bay, but actually considered as forming no portion of such bay designated as a distinctive body of water.

Let it be supposed for further illustration that, instead of penetrating the peninsula for a short distance, Mission Creek had held by the same course and width, within its own banks, entirely across the land, and connected as a channel ~~formed~~ with the Pacific Ocean on the west. Would it in such case be claimed that this channel formed, as an arm of the sea, one of the boundary calls of the decree? Manifestly not; but the line of the shore would be followed around the peninsula, cutting ~~xxxx~~ both mouths, in continuation of the general course of the high-water boundary of the entire tract. And if this be so, it must follow that the lesser incident of an intersecting channel, within such banks, on the one side, cannot operate to require its notice as a boundary, and an exclusion of its area from the quantity of the grant.

I am aware that I have extended the consideration of this point to an unusual length; but in view of its importance and of the time and labor expended in its discussion, as well as of the misapprehension which it seems to me must exist in the minds of counsel who have appeared in support of the Stratton survey, I have thus sought to set at rest the conflicting theories concerning it. To me it is plain that the confirmation extends to the high-water mark of the shore of the bay, leaving entirely out of the intention of the decree any reference whatever to the inland channels of the streams intersecting the granted peninsula; that the adjudication of the boundary goes to the settlement of the rights of the City not only by relation as of the date of filing of the petition with the Board of Land Commissioners, but that it goes to "the title of the claimant as it existed upon the acquisition of the country." (Beard vs. Federy, 3 Wall. 478.) This adjudication necessarily postpones the State, even in the exercise of her tide water sovereignty, to the rights of these claimants under the City; and but for the public character of the works made by or under State authority to improve the public easements and water front of the City, which works have also been co-operated in by the City herself the title might probably be held to extend through riparian proprietorship to the present line and shores of the bay.





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But unfortunately there is no need to extend this question to that limit.

The one thing for this Department is to find such shore line of high water as it existed in 1846. To this end my predecessor directed that the "Red Line Map" be made the basis of the survey. I do not regard this as commanding an inflexible adherence to such map, but construe it as intending to require that the former shore of the bay be followed, and not the banks of estuaries and streams. If at any point the red line traverses the land above the tide line manifestly the tide line must be the boundary. So also where the line may chance to lie beyond the shore, out in the water of the bay, the tide line must still govern. But, following such tide line in its general course along the shore as it then existed it must cross the mouths of these estuaries, including Mission Creek at the points where the banks of the stream came down to the bay though such banks may have been composed of marsh lands, and were subject to tidal overflow as banks of the streams.

It is objected that this creek was from 140 to 270 feet in width, and navigable. So many streams are miles in width, navigable and below high tide for many miles from their mouths. But they are not excluded from the area of tracts of land bounded by the shores of the superior bodies of water into which they flow at various angles. My predecessor intended simply to direct that Mission Creek be not made an exception to this general rule.

It is alleged that the same was declared navigable by Act of the State Legislature March 31, 1854. I am unable to perceive in this fact any support for the theory that it was regarded as a part of the bay. The language of the statute is that "the creek known as Mission Creek in the County of San Francisco from its mouth as far as the tide flows, shall be declared a navigable stream." It is designated as a creek, described as within the County, referred to as having a mouth, and declared to be a stream. By sections two and three of the same Act it is again identified as a creek.

This statute in itself shows the opinion ~~the~~ of the State Legislature to have been according to the actual fact; not that this creek formed a part of the Bay of San Francisco, and a boundary of the peninsula but that it was an inland stream within the body of the county; and the Court of Sessions was expressly authorized by the Act to license bridges and ferries across such stream provided navigation should not be thereby impeded. Had this been deemed a body of water instead of a stream, its mouth would have been denominated an entrance, and all the descriptive terms would have corresponded to the proper appellation of a bay, gulf, or sound, as the case might be. I cannot conceive how a claimant under the state can set up a construction so plainly at variance with what was obviously the legislative understanding in defining this water as a stream, known as a creek, and made subject to bridging and ferriage, with a saving only of the easement attaching to other navigable streams.

I might here dismiss this review without alluding to the partial execution of the order of my predecessor; to the liberties taken with his instructions by the late Surveyor-General; and to the repeated efforts of various parties to force the Department to an acquiescence in the subsequent proceedings had and reported. I have only to say that I do not look with favor upon an attempt to carry into effect by inference and evasive construction the execution of a survey so manifestly at variance with both the letter and spirit of the directions of the former head of this Department.

It is said that great interests are involved, calling for intervention or such recognition as to incline me to listen to appeals of various property owners under title granted by the State of California. I am not unaffected by proper considerations, where large and material interests must suffer from official action, yet,





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being but the minister of the law, cannot yield any convictions of duty to favor such interests, however, or in whomsoever vested. But here are imposing interests, each clamoring for interposition. I can but execute the decree of the authorities confirming the grant, construing whatever of doubt it may present according to my best individual and official judgment.

If the claimants under the State have a valid title, it is the duty of the Department to recognize that fact, no matter how great the injury to those holding under the Pueblo title. The latter have occupied and improved the lands in controversy by the erection of fine and valuable buildings. They have become the homes of a large number of persons of small means, who acquired their title through the pueblo title, and who for years lived in ignorance of any adverse claims. The claimants under the State rely upon their naked legal rights, and demand their recognition by the Department without reference to the hardships such recognition will cause to those bona fide purchasers under the Pueblo title. As before stated, it is my duty to recognize the legal rights if the State claimants if clearly established; but it is also my duty to ~~establish~~ require sufficient and convincing proofs of such rights before rendering a decision that will disturb titles and deprive the occupants of their lands, their homes, and their places of business.

This department can and ought to take cognizance of the fact that long before the claimants had made a pretense of ownership the occupants were claiming the lands under the Pueblo title, and by their money expended in improving them the same became valuable, and their acquisition desirable to claimants. For a nominal sum they now hope to acquire property worth millions of dollars, rendered thus valuable by the money and labor of those whom they now seek to despoil.

Before lending my aid to enforce naked legal rights of this character, the proofs must be made exceedingly clear and conclusive. But, fortunately, in this case I have no difficulty in determining that the claim of the parties holding under the State is not only without legal right, but subversive of equity and justice; and I cannot permit myself, with the authority of the Department committed to my charge, to assist a claim based upon such considerations, in overthrowing the settled rights of the community, appropriating their property and their very homes, in the manner which would result from a modification of the decision already made.

On the other hand, if the parties holding the State title have made improvements under such title they are not without their remedy; inasmuch as the City is but the trustee of such occupants, who may at a nominal figure secure a title from the City authorities to the premises so occupied.

Leaving in force the decision of August 2, 1882, as to the eastern boundary of the Presidio Military Reservation, a review of which was declined October 26, 1882, I also direct a substantial adherence to my predecessor's decision of March 3, 1881, a review of which is sought by the present application, which motion for review is accordingly overruled. In executing the survey the suggestion herein expressed will be carried into effect. The papers are transmitted herewith.

Very respectfully;

Vbl. 2, No. 561. H.M. TELLER, Secretary.

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THE COMMISSIONER OF THE GENERAL LAND OFFICE:

SIR- On the 3d day of March, 1881, the then Secretary of the Interior, after a careful examination of the law and facts, decided the case relating to the matter of the survey of the Pueblo Lands of San Francisco, and directed a survey of said lands to be made, taking as the basis for such survey what is designated as the "Red Line Map" of the original ~~XXXXXX~~ shore, as determined by authority of an Act of the Legislature of California approved March 26, 1851.

In the month of April following, a motion for review was presented, with the permission of the Department, by the parties who contend for the Stratton survey.

After a very careful exsmination of the law and facts in this case, on the 12th of July last, I adhered to the views expressed by my predecessor in his opinion of March 1, 1881. Just before the signing of my decision of July 12, 1883, the counsel for the claimants under the state applied to have certain facts found for the purpose, as they declared, of enabling them to maintain their cause in the courts. In my decision of July 12th, I endeavored to state explicitly on what ground I understood my predecessor had rested his decision, and to express my adherence to the same views. Since such decision the claimants under State title insist that the findings of fact in the several decisions in the case are not sufficiently explicit to enable the Court to determine what are the facts on which these decisions are based, and again renew their request for special finding. On the 14th of August, last, the Assistant Secretary, acting in my stead, directed a stay of proceedings, until otherwise directed. This was for the purpose of allowing time to consider the request of the parties for special findings. Such request for special finding included:

FIRST- We ask that the decree of the Court of the 18th of May, 1865, by which the Pueblo Lands were confirmed to the City of San Francisco, shall be fully found and set forth."

This was done, as will be seen from an examination of the decisions.

SECOND- We wish the fact that the red line map existed before the red line was drawn upon it, and before the Act of the Legislature was passed in 1851, which brought the red line into existence.

That the red line map so called, did exist before the red line was drawn on it, was doubtless proved by the testimony.

The Act of March 26, 1851, referred in terms to an existing survey and a "map or plat of the same now (then) on record in the office of recorder of the county. (Hittell Sec.4327.)

"THIRD- We wish the fact to appear that the red line was made as indicating the front and inner boundaries of the beach and water lots, leased by the State to the City of San Francisco for ninety-nine years, and was not made for the purpose of marking the line of ordinary high water."

As the red line was not adopted as the actual line of survey by my predecessor, but was required to be taken as the "basis of a survey" and as in my order I distinctly directed the Surveyor General to make his survey on the basis of the red line, and not by it, using it only as the meand of determining the shore line at high water mark and indicating the general line of the shore at the time the red line was put on the map, I am of the opinion that the second and third requests are immaterial, and I decline to find on them further than I have already done, except to say, that as the red line m



[illegible]



red line marked both the inner and the outer boundary of the water lots claimed by the State, and leased to the city, the fact would seem to be that all parts of it stood alike in relation to the State title as a boundary, and its inner portions were as controlling and material touching the State claim as the outer boundaries of the said lots on the newly adopted shore line. The boundaries were continuous, and were described by a single line extending around the tract at various angles, by reference to an already completed survey and map, so far as related to the blocks and streets, and running as to other portions by ship's channel and the line of high water mark. It was a statutory boundary, all the courses and distances of which were prescribed by the Act, and extended from the point of beginning at the intersection of the line of Simmons Street and the southern boundary line of the City, to the intersection of the described lines of Jefferson and Larkin streets, and "to the natural high water mark" on the western boundary line of the city. The course is then fixed by description "thence along the line of high-water mark to its point of intersection with the southern boundary line of said city - being the identical inner line which I am asked to find, "was not made for the purpose of marking the line of ordinary highwater."

In view of this law of the State I am not required to find as a fact what was its purpose - that being a matter to be judicially determined from the language of the Act itself. I could not, therefore, find as requested, even if the question became material to the decision of the case before me.

FOURTH- That what is known as the red line drawn upon what is known as the red line map was not the result of any survey but was simply traced by Eddy without making actual survey."

This is not at all material to the question at issue, and I decline to find specially on that point.

FIFTH- That to follow the red line marked by this William M. Eddy will carry the line of the survey, made in execution of the said decree of the 18th of May, 1865, at certain places (designating them), out into the deep sea, and at other places over high lands and rocky hills."

There is some proof to sustain this request, but it is not at all material, inasmuch as the red line is not to be followed by the survey in all respects, but only to be taken as the basis of such survey; and I, therefore, refuse to find further on that point than I have done.

SIXTH- That on the 7th of July, 1846, Mission Creek was at its mouth 275 feet wide, with an average width of 140 feet; that it extended up a mile and a quarter from the mouth or the place where the red line crosses it; that throughout its entire length the daily tide regularly ebbed and flowed; that the same was navigated by sloops and small schooners and other craft; and that said creek was not an outlet for fresh water, except the surface drainage of the adjacent hills during the rainy season; that it was declared a navigable stream March 31, 1851, by an Act of the Legislature of the State of California, and that its depth at low tide at the mouth where the red line crosses it was (3) feet and at high tide about nine (9)."

It was conceded by the decision that Mission Creek was as well a tidal inflow as an outlet for the inland waters and it was recited that it was of a certain claimed width and navigable; also that it had been by Act of the State Legislature declared a navigable stream. I decline to find further as to the exact amount of outflowing water, or the exact distance from its mouth to which the tide reached. The whole decision sets out my deliberate judgment, that notwithstanding the admitted facts it was not in law excluded from the grant.

SEVENTH- That all this land described in the last paragraph as Mission Creek, was covered by the daily tides of the sea or bay."





W Whether the waters of the bay at any time covered over all the lands now claimed by the State, is a matter of some doubt; but it is undoubtedly true, that when the creek was swollen by rains the tide did increase the volume of the water in said creek, and overflow the banks thereof to some extent, but I am not satisfied that it did to the extent claimed by the counsel for claimants. But whether the tide did so flow or not, over the lands claimed under the State title, is immaterial in the consideration of this case; as Mission Creek does not, and never did constitute any portion of the Bay of San Francisco, the boundary of the Pueblo on the North and East, and a survey will not be correctly made, that follows the windings and meanderings of said creek so as to exclude from the Pueblo the lands in said creek.

"EIGHTH- That this land so within Mission Creek is excluded from the lands of the State and given to the Pueblo lands of the City by the decision in this case."

This has been fully answered in the answer to the sixth request.

NINTH- Find, as a matter of fact from the testimony, that the other portions of the disputed lands which, by the decision in this case, are given to the City as Pueblo lands, were below that part of the shore of the bay to which the waves ordinarily reached when the tide is at its highest, and in this finding designate the portions of the shore which were in July, 1846, so covered by the ordinary reach of the waves when the tide is at its highest."

I do not find as a fact the statement made in this request. None of the lands included in the Pueblo by the decision of March, 1881, or July 12, 1883, are below "ordinary high-water mark of the lay of San Francisco," which is the boundary line on the North and East.

"TENTH- Find the fact that on the                      day of                      1867, Stratton made the survey known as the Stratton Survey, and designated in his finding of fact where the line as established by Stratton falls, finding also the history of that survey as to its return to the Land Office, etc., and that it was confirmed according to the facts disclosed by the record."

"ELEVENTH- Find the fact that the ~~General~~ Surveyor General Wagner, on the                      day of                      1881, made a return to the Land Office, with his approval, a survey of this line, and find where as a matter of fact, that line falls upon the earth's surface, and trace its position with Stratton's lines and with the line you approve in this case."

The action of Stratton and Wagner is immaterial in the consideration of this case, unless such action had been approved by the Department; and I decline to find as requested in the tenth and eleventh requests.

"TWELFTH- Find as a fact that this survey is one which is to be made and executed under the Act of Congress of July 1, 1864. Thirteenth Statutes, 332."

This is admitted; and the decisions already made assume, as matter of law, that such is the requirement of the Statutes.

"THIRTEENTH- Find as matters of fact, all the steps that were taken in this case, taking an appeal to the Secretary in regard to the boundary of the Pueblo lands, and also what acts on the part of the City of San Francisco were done in resistance or dismissal of the appeal."

An answer admitting the foregoing to be true, is not the finding of facts material to the determination of the cause, but the recital of what the files ought to show, if true; and such finding would not be higher evidence than the files of the Department; and it is immaterial what the City of San Francisco has done in relation to such appeal. I therefore refuse to find as to that.





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The counsel representing the plaintiff claimants under State title contend that these findings are necessary to enable them to go into court and fully protect the interests of their clients. Counsel appear to have lost sight of the fact that my decision was based on a motion to vacate the order made by my predecessor on the 31 day of March, 1881. I decline to accede to the request, and left the original action as it stood, and as the Surveyor General's survey must be approved by me before it becomes final, and as there had been some difficulty therefore in having this survey promptly made according to the direction of my predecessor, I took occasion to give my views somewhat fully by way of direction to the Land Office. I find no difficulty in determining what my predecessor did direct, and the survey could readily have been made in accordance therewith. I have both in my decision of July 13th and in this, endeavored to make it clear what my views are on this question, and just how the survey should be made, and suggest that you inform the Surveyor General that he is expected to make the surveys in accordance therewith, and that he be directed to make such survey within twenty days after he received this order, and, that he without delay return the survey for approval. I return the papers in question.

Very respectfully,

H. M. TELLER, Secretary.





COMMUNICATION DIRECTING SURVEY TO BE MADE.

Department of the Interior, General Land Office  
Washington, D.C. October 24, 1883.

W. H. Brown, Esq.,  
U.S. Surveyor-General, San Francisco, Cal:

Sir:

I transmit herewith a copy of the decision of the Honorable Secretary of the Interior, of the 18th inst., in the matter of the survey of the private land claim in California, known as the Pueblo Lands of San Francisco.

This is supplemental to the department decision of July 12th, last, in the same case, copies of which were mailed to your address on July 19th, last.

You are hereby instructed to carry into effect the directions of the Department, by the execution of a survey of said claim, as contemplated by the decisions referred to, and in accordance with the suggestion of the Honorable Secretary, you will make said survey within twenty days after you receive this order, and return the plat for approval without delay.

Please acknowledge the receipt of this communication.

Respectfully,

N. C. McFARLAND, Commissioner.



LETTER OF INSTRUCTIONS TO DEPUTY UNITED STATES SURVEYOR GENERAL VON LEIGHT.

(December 1883.)

"Special instructions to United States deputy surveyor F. Von Leicht to complete survey of the boundaries of the pueblo lands of San Francisco, in the State of California, said City of San Francisco, confirmed.

"Sir: You will proceed at once under your contract dated December 3d 1883, and the provisions of the Act of Congress of July 1st, 1864 (13 statutes 332) to make the survey of the boundaries of the pueblo lands of San Francisco in accordance with the decree of the United States Circuit Court of May 18th, 1865, and the Act of grant and confirmation of Congress approved March 8th, 1866 (14 Statute 4) as construed by decisions of the Secretary of the Interior dated respectively March 3d, 1881, and July 12th, 1883, and further and finally declared and adhered to on the 18th of April, 1883, copies of which are here with furnished and made a part of these instructions.

"You will particularly observe the directions respecting the crossing of the mouths of the estuaries and streams, as well as in all other particulars, finding the true shore of the bay, in contradistinction from the banks of such streams as the time existed on the 7th of July, 1846.

"It will be observed that the principal points of what is known as the Stratton survey, and also of the recent Allardt survey, where land on the banks of such estuaries is improperly excluded, are:

- " 1. On the northern boundary near the Presidio Military Reservation.
- " 2. On the eastern boundary near the United States Custom House.
- " 3. In the vicinity of the crossing 4th and 5th Streets and southerly.
- " 4. Mission Creek and adjacent lands.
- " 5. Islais Creek and lands adjacent.

" You will include all these and any others falling within the red line or real shore of the bay, in conformity with the decision of the head of the department. Such well marked lines and boundaries as may have been established by Stratton and Allardt, as shall not conflict with the construction of the law thus authoritatively made, and shall be found truly represented and surveyed, may be adopted and incorporated by you.

"The foregoing will be found sufficient for your guidance. You will obtain copies of such maps and documents, including the red line map referred to in the decision, as will aid you to a correct and specific performance of your duties, and I have to request that the survey be returned to this office at the earliest possible date, without awaiting except it be absolutely necessary the full time specified by your contract, of which these instructions will in conformity with law form a part.

"Very Respectfully,

"W.H. BROWN,

"United States Surveyor General of California."





REPORT OF DEPUTY UNITED STATES SURVEYOR VON MEIGUT.

(January 18, 1884.)

"In submitting my survey for your approval, I beg leave to state that I have strictly complied with the instructions by following the red line and including all estuaries and adjacent lands, but that it is my belief, based upon close inspection of the ground and investigations made that this survey is not in accordance with the decree of the United States Circuit Court of May 18th, 1865. This decree confirms to the City of San Francisco, the claims thus described. To obtain the boundaries of the tract, I have therefore, to find the boundaries of the peninsular above ordinary high water mark. The additional description bounded on the North and East by the Bay of San Francisco and on the West by the Pacific Ocean," gives only the geographical position of the peninsular and fixes the location of the grant."

"The easiest solution is, therefore, to await the rise of the tides to the ordinary high water mark, and then to trace the boundary lines around the peninsular around the edge of the salt water. All lands which are then found covered with salt water occasioned by ordinary high tide must be excluded from the land confirmed.

"On the shore of the Pacific Ocean the line of high water mark follows the sandy beach, which runs in an almost straight northerly course to the Cliff House, then turns easterly along a rocky beach to Fort Point, the entrance to San Francisco Bay.

"Along that portion of the peninsular there is little difficulty to establish the line of high water mark, as the ground has undergone no change since the date of the conquest, the 7th of July, 1846, and has moreover steep and rocky slopes and the surveys originally made by Stratton in 1867-8 and approved by the United States Surveyor Upson in August, 1868, have been recognized as correct, and have never been disputed.

"While making the survey on the northern boundary near the Presidio Military Reservation along the outer edge of the salt marsh, which your instructions ordered me to include, and which survey happened to be at low tide, I particularly observed the marks of high water which were plainly shown by deposits of straw, manure, and small sticks and other floating material, which the tide had carried and left along the line of high water mark and which line strictly coincided with the boundaries of the survey as made by Allardt, as far as I had the opportunity to observe.

"In making the survey along the so-called red line on Mission Bay, where the ground had been left in its original condition, and undisturbed by improvements that would have changed its outline, I found that the red line follows the outer edge of the salt marsh.

"I was forced to wait for low tide. At high tide the whole area excluded by Allardt's survey was submerged under the tide water of the Bay of San Francisco, forming to the eye an interrupted sheet of water without any line of demarkation between the salt marsh and tide lands. On the 14th and 15th of December, A.D. 1883, while making the survey of the lands adjacent to Islais Creek in accordance with your instructions, I was compelled to wait for low water in order to reach the ground along the outer edges of the salt marsh.

"The ground showed then the signs of recent flooding, the whole marsh was saturated with salt water, which stood over its surface from one to two inches deep, retained by the slight irregularities of the surface. Rafts of timber twelve inches and more in diameter were lying on the surface of the salt marsh at different points carried there by the high tide.

"At high tide when I attempted to reach the same ground on which I had the day before established the different stations of the boundary line in accordance with the instructions, I had to make use of a boat in which I was rowed over the surface of the salt marsh measuring at different stations







the depth of water, which I found to be uniformly sixteen inches.

"The salt marshes being of a uniform level, it follows that the ordinary average high water mark reaches back to the inner line of the salt marsh, which ought therefore to be adopted as the boundary of the peninsula on which the land is located.

"The salt marshes are a geographical formation caused by the action of the tides.

"Mission Creek and Islais Creek are such tidal sloughs that had formerly considerable depth, but they have of late years very much silted up, showing the fate of the bay and all the tidal sloughs emptying into the bay, by receiving a share of the alluvial deposits which the Sacramento and San Joaquin Rivers and their tributaries brought down from the interior of the country, Mission Creek and Islais Creek within the boundaries of the salt marshes are not creeks in the true sense of the term but tidal sloughs, with low marshy edges and without definite banks, as inland water courses invariably have, they carry principally salt water at the flowing and ebbing of the tides, the fresh water which drains them after heavy rain-storms would not amount to ten per cent. of the whole volume of water carried by these tidal sloughs and not perceptibly change its character.

"The watershed<sup>which</sup> drains into Mission Creek has an area of about four hundred acres, while that of Islais Creek has about 2000 acres area, but most of the rain water which falls into these watersheds, sinks in the ground before it reaches the salt marshes of Mission Creek and Islais Creek.

"The following diagram shows the soundings of Mission Creek at the point where my survey crossed said creek as taken across the mouth at the high tide of December 14th, 1883. What the extent and the boundaries of these salt marshes were in the year 1846 is now only a matter of conjecture, but when I compare my present surveys of the outlines of the salt marsh with the charts of the United States Coast survey of 1853, I find that these boundaries have not undergone any change from natural causes, but that changes only exist at such places where industrial enterprise has deemed it important to reclaim the lands from the overflow of the seas by filling in and constructing such barriers as would answer that purpose.

"On the eastern boundary of the pueblo lands, along the original shore of the bay, large areas of tide lands have been reclaimed by filling and the original line of high water could at the present time not be recognized, as the land is now covered with streets and large buildings."

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COMMITTEE ON OUTSIDE LANDS.

(January 5, 1885.)

Meeting of Supervisors of Jan. 5, 1885.

The Standing Committees.

Mr. Farwell introduced a resolution appointing the standing committees as follows:

Outside Lands:

Farwell

Gillera

McMillan

Heyer

Kunkler

(Daily Rept., Jan. 6, 1885, Vol. XXXIII., No. 4, p. 3, col. 4)

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San Francisco Daily Report.

San Francisco, Tuesday Evening, October 27, 1885.

Vol. XXXIV., No. 98.

(Does not appear)





RESOLUTION NO. 18491, NEW SERIES.

(November 2, 1885)

Whereas, by the Van Leight survey of the southern boundary at the pueblo land patented to this City and County, the southern boundary thereof as surveyed by James T. Stratton in 1867-8 was changed, and, as patented, was fixed about 981 feet north of said Stratton's survey thereof, and by said change a strip of land bounded by said patented land on the North, said Stratton's line on the South, the ocean on the West, and the San Miguel ranch on the East, has been excluded from the pueblo land patented, as aforesaid, and the title thereto still remains apparently in the United States; and

Whereas, prior to the issuing of said patent this City and County relied upon said Stratton's survey of said southern boundary and believed said strips of land to be a part of its said pueblo land, and acting upon the belief it had, in 1870 granted all of said lands, not reserved for the City's uses to certain persons, under the provisions of the laws relating to the Outside Lands, and under said laws it had received from said grantees deeds for all streets, public squares, school lots, and engine lots reserved by the City, as aforesaid; and

Whereas, said grantees, acting upon the belief that said strips of land was included within said pueblo, paid to this City and County many thousands of dollars as Outside Land assessments and made said deeds to this City and County; and

Whereas, there are many school lots, engine lots and one public square, and all of the streets, within said strip of land which have been deeded to this City and County, and are valuable property and necessary to the City's uses, amounting to about 88.8 acres; now therefore

Resolved, That the City and County Attorney be and he is hereby authorized to represent this City and County in all proceedings which may be found necessary to procure the perfection and confirmation of the title to said strip of land to this City and County and its grantees by a grant thereof from the United States, and that the Representatives in Congress from this district are hereby requested to give their aid in procuring such Congressional action to that end as may be necessary; and said City and County Attorney is hereby instructed to act in concert with the attorneys for the private land-owners in said strip of land in all lawful and necessary proceedings which have been or may be taken by them to so perfect said title to said land.

And the Clerk is hereby directed to advertise this resolution as required by law.

In Board of Supervisors, San Francisco, November 2, 1885.

Adopted by the following vote:

Ayes--- Supervisors Gates, Roy, Kunkler, Abbott, Farwell, Pond, Williamson, Farnsworth, Heyer, Gilleran, McMillan, Talleau.

Jno. A. Russell, Clerk.

(San Francisco Daily Report Vol. XXXIV, No. 104. Nov. 3, 1885. p.4. Col.3.)

THE HISTORY OF THE

REPUBLIC OF THE UNITED STATES

The history of the Republic of the United States is a story of the growth of a nation from a small colony to a great power. It is a story of the struggles of the people to secure their rights and liberties, and of the efforts of the government to maintain the Union and promote the welfare of the people. The story begins with the first settlers who came to the New World in search of a better life. They found a land of opportunity, but they also found a land of conflict. The struggle for land and power between the different groups of settlers led to the American Revolution. The people fought for their rights and won. They established a new government based on the principles of liberty and justice for all.

The new government was a great achievement. It was a government of the people, by the people, and for the people. It was a government that stood for the rights of the individual and the rights of the nation. It was a government that was founded on the principles of the Declaration of Independence, which declared that all men are created equal and that they are endowed with certain unalienable rights, among which are life, liberty, and the pursuit of happiness.

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THE HISTORY OF THE

REPUBLIC OF THE UNITED STATES



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RESOLUTION No. 18873, N. S.  
REQUESTING CITY ATTORNEY TO REPRESENT  
THE CITY BEFORE SECRETARY OF INTERIOR.

(June 2, 1886.)

The Board of Supervisors met last night, all the members present, and the Mayor in the Chair.

The Stratton Survey.

The City and County Attorney was directed to proceed to Washington to represent the City and County before the Secretary of the Interior in the matter of the Pueblo survey. His expenses were limited to \$1,000.

City and County Attorney have addressed the Board and said he would defend the present established survey of the lands, and endeavor to prevent its being established by the Stratton survey.

(Daily Report, May 19, 1886, Vol. XXXX., No. 116, p. 1, col. 5.)

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RESOLUTION No. 18873 (New Series)

Resolved that in the matter of the Pueblo survey and the City and County of San Francisco's patent to the lands of the Pueblo, which comes on for hearing before the Secretary of the Interior on the 25th of June next, the City and County Attorney be requested to proceed to Washington, D. C., in time to be present at such hearing, and that he then and there represent the City and County of San Francisco before the Department of Interior and before any other department or tribunal in which the city's title to Pueblo lands may be questioned. Provided, that the expense shall not exceed \$1,000. In this behalf the City and County Attorney is granted a leave of absence. And the Clerk is hereby directed to advertise this resolution as required by law.

In Board of Supervisors, San Francisco, May 18, 1886.

Passed for printing by the following vote:

Ayes: Supervisors Gates, Roy, Kunkler, Abbott, Farwell, Pond, Williamson, Farnsworth, Heyer, Gilleran, McMillan, Valleau.

Jno. A. Russell, Clerk.

(Daily Report, May 19, 1886 ad. p. 4, col. 4.)

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San Francisco Daily Report, Evening.  
San Francisco, Wednesday Evening, June 2, 1886.  
Vol. XXXV. No. 128.

The Board of Supervisors met last night, all the members present and the Mayor in the Chair.



Attorney Love's Trip:

The resolution authorizing the City and County Attorney to go to Washington and appear before the Secretary of the Interior in defense of the City in the Pueblo land suits, his expenses not to exceed \$1,000., was finally passed.

(San Francisco Daily Report, June 2, 1886, Vol. XXXV., No.128)  
p. 1, col. 3.





RESOLUTION No. 18931

PROTESTING AGAINST SETTING VON LEICHT SURVEY ASIDE.

(June 2, 1886)

The Board of Supervisors met last evening, all of the members present excepting Abbott and Pond, the Mayor in the Chair.

The Pueblo Lands.

A series of resolution was read, which, by a unanimous vote, it was resolved to send to the Secretary of the Interior. The resolutions embodied a protest against the attempt being made before the Interior Department to set aside the Von Leicht survey and to reopen the Pueblo survey at all, They represent that the attempt is being made in the interests of speculators, who, if they succeed, will endeavor to reap a profit by unsettling titles to real estate. It is stated that any survey not following the Von Leicht survey would rob the City of lands upon which hundreds of thousands of dollars have been spent for improvements.

(Daily Report, June 29, 1886, Vol. XXXV., No. 151, p. 1, col. 5.)

(See "Proceedings in Relation to Outside Lands" ante)





CHAP. 4.--- AN ACT TO RELINQUISH THE INTEREST OF  
THE UNITED STATES IN CERTAIN LANDS TO THE CITY AND COUNTY OF  
SAN FRANCISCO AND THEIR GRANTEEES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right, title, and ownership of the city and county of San Francisco, in the State of California, to the body of land hereinafter described are hereby confirmed, and all the right and title of the United States to said land are hereby granted and relinquished to said city and county, and to those persons, and their successors in interest, to whom portions of said land have been heretofore granted and conveyed by or on behalf of said city and county, to the extent of their interest in said land. Said land hereby granted is described as follows:

Situated within the corporate limits of said city and county; bounded on the north by the southern boundary-line of the land granted by the United States to said city and county by patent dated June twentieth, eighteen hundred and eighty-four; on the west by the Pacific Ocean; on the south by the line surveyed by Deputy United States Surveyor James T. Stratton, in eighteen hundred and sixty-seven and eighteen hundred and sixty-eight, as the southern line of the land granted to said city and county by act of Congress approved March eighth, eighteen hundred and sixty-six; and also bounded on the south by the northern boundary of the Rancho Laguna de la Merced, granted by the United States to J. de Haro and others, September tenth, eighteen hundred and seventy-two, wherever said northern boundary of said rancho is north of said line surveyed by said Stratton; on the east by the western boundary of the Rancho San Miguel, granted by the United States to J. de J. Noe, March thirtieth, eighteen hundred and fifty-seven.

Sec. 2. That upon the approval of this act the Commissioner of the General Land Office shall issue a patent for said land to said city and county, and said patent shall inure to said city and county, and the grantees of the same, and their said successors in interest, as a confirmation of said city and county's grants of said land.

Sec. 3. That all laws in conflict with the provisions of this act are hereby declared inapplicable to the lands hereby granted and relinquished.

Approved, December 20, 1886.

---c0o---



COMMITTEE ON OUTSIDE LANDS.

(January 3, 1887)

At 10:17 o'clock this morning Mayor Bartlett called the Board of Supervisors to order for the last time for the purpose of enabling the out-going members to introduce their successors. All the members of the old Board were present except Roy, and all the members elect were present.

Standing Committees:

The Mayor announced the appointment of standing committees as follows, and the **appointments** were confirmed unanimously on motion of Boyd:

Outside Lands:

Knorp  
Boyd  
Lambert  
Morton  
Curran

(Daily Report, Jan. 3, 1887, Vol. XXXVII., No. 1, p. 1, col. 5.)





RESOLUTION No. 15, 990 (Third Series).--

Resolved, That this Board hereby accepts the provisions of the Act of Congress of May 9, 1876, whereby the United States Government relinquishes a portion of the Presidio Reservation for the projection of Lyon street; provided that said Lyon street shall be extended to the Bay of San Francisco, eighty feet in width, and that Broadway, Vallejo, Green, Union, Filbert, Greenwich, Lombard, Chestnut, Francisco, Bay, NorthPoint, Beach, Jefferson, Tonquin and Lewis streets, as laid down on the official map of the City and County of San Francisco, be extended westerly to intersect the easterly line of Lyon street, and are dedicated as public highways and streets forever;

Further resolved, That Lyon street be and is hereby extended to the Bay of San Francisco, eighty feet in width, as surveyed, delineated and laid out by the city and county and monuments placed thereon in November, 1881, under the direction of the United States Surveyor-General, and Broadway, Vallejo, Green, Union, Filbert, Greenwich, Lombard, Chestnut, Francisco, Bay, NorthPoint, Beach, Jefferson, Tonquin and Lewis streets are hereby extended westerly to Lyon street, and all of the above-named streets as so extended are hereby declared to be open public streets and highways forever.

And the Clerk is hereby directed to advertise this resolution as required by law.

In Board of Supervisors, San Francisco, March 16, 1896.

Adopted by the following vote:

Ayes-- Supervisors King, Scully, Benjamin, Hirsch, Dimond, Hughes, Dunker, Taylor, Morgenstern, Spreckels, Hobbs, Wagner.

JNO. A. RUSSELL, Clerk.

City of Sacramento,     )  
                                  )  
County of Sacramento, )ss.  
                                  )  
State of California)

Vera A. Winchester, being first duly sworn, deposes and says

that she is duly and lawfully married to the said  
the City and County of San Francisco, State of California, for the  
purpose of returning the title of the original record of this  
and County of record in the Library of the State of California,  
California.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

to pay 10% of the cost of the purchase of the property, \$1.00

1. Every person, at the time of his admission to membership, shall

2. The purpose of this study is to determine the effect of the use of the

[illegible]

...and the ...

From the 1st to the 10th of the month, the weather was very warm and the water was very high.

... .. as foreign' et al

[illegible]

Printed by

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.



RESOLUTION NO. 2646.

WHEREAS, A PETITION FROM property owners was filed May 5, 1902, for the opening and extension of Lyon Street to the waters of the bay, by securing the land necessary to extend the said Lyon street, and also to extend Green street, and connect said Lyon street with other streets running easterly and westerly therefore.

Resolved, That the City Attorney be and is hereby directed to take appropriate proceedings to determine the location of said Lyon street, and to cause to be removed all obstructions thereon, if any exists, to the end that said Lyon street may be extended as provided by the act of Congress of 1876, and as accepted by the City and County of San Francisco.

And the Clerk is hereby directed to advertise this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, May 19, 1902.

Adopted by the following vote:

Ayes-- Supervisors Bent, Booth, Borton, Brandenstein, Braunschart, Conito, Connor, Curtis, D'Amcona, Eggers, Loughery, Lynch, McClellan, Payot, Sanderson, Wilson, Wynn.

Absent-- Supervisor Alpers.

CHAS. W. FAY, Clerk.

Approved, San Francisco, May 22, 1902.

E. E. SCHMITZ,

Mayor and ex-officio President of the Board of Supervisors.

City of Sacramento, )  
County of Sacramento, ) ss.  
State of California)

Vera A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of

ARTICLE I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Representatives and direct Taxes shall be apportioned among the several States which may be admitted into or excluded from this Union according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including all bound Persons for Service or Labor, and all free Persons of color, three fifths of all other Persons.

And the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

IN SENATE, FEBRUARY 20, 1793.

ADOPTED BY THE SENATE.

Approved, FEBRUARY 20, 1793.

Approved, FEBRUARY 20, 1793.

Approved, FEBRUARY 20, 1793.

Approved, FEBRUARY 20, 1793.

City of New York  
County of New York  
State of New York

That she is duly and regularly employed by the Board of Supervisors of



the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.

That she has carefully compared the foregoing resolution, No. 2646 of the Board of Supervisors of the City and County of San Francisco, State of California, with the printed resolution published in the Evening Post, official newspaper of said City and County of San Francisco between the years 1899 and 1909, and that the foregoing is a full, true and correct copy of said resolution No. 2646, as appears in said official newspaper on file in the State Capitol at Sacramento, California.

IN TESTIMONY WHEREOF, she has hereunto placed her hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(SEAL)

Approved, San Francisco, May 18, 1908. A. H. SMITH,  
Mayor and ex-officio President of the Board of Supervisors.

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Yours in Testimony, being duly sworn, deposed and said that she is duly and lawfully employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.





RESOLUTION NO. 2647.

RESOLVED, THAT THE SUM OF sixty-five hundred (\$6500) dollars be, and the same is hereby appropriated and set aside in the budget for the ensuing fiscal year, commencing July 1, 1902, and ending June 30, 1903, for the purpose of the purchasing and condemning of the necessary lands (known as the "Miranda Grant"), embraced in Lyon street, for its opening and extension as provided by the act of Congress of 1876, and as accepted by the City and County of San Francisco.

And the Clerk is hereby directed to advertise this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, May 19, 1902.

Adopted by the following vote:

Ayes-- Supervisors Bent, Booth, Bixton, Brandenstein, Braunschweig, Corio, Connor, Curtis, D'Ancona, Eggers, Loughery, Lynch, McClellan, Payot, Samler, Wilson, Wynn.

Absent-- Supervisor Alpers.

CHAS. W. FAY, Clerk.

Approved, San Francisco, May 22, 1902. H. B. SCHMITZ,  
Mayor and ex-officio President of the Board of Supervisors.

City of Sacramento, )  
County of Sacramento, ) ss.  
State of California)

Vera A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.



RESOLVED, THAT THE SUM OF FIFTY-THREE THOUSAND (\$53,000.00) be, and the same is hereby appropriated and set aside in the budget for the ensuing fiscal year, commencing July 1, 1903, and ending June 30, 1903, for the purpose of the purchase and conveyance of the necessary lands (known as the "Alameda Grant"), situate in Lyon street, for the opening and extension as provided by the act of Congress of 1876, and as accepted by the City and County of San Francisco.

And the Clerk is hereby directed to advertise this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, May 12, 1903.

Adopted by the following vote:

Ayes-- Supervisors Bent, Beale, Gordon, Pridemore, Hart, Gatto, Connor, Curtis, D'Arbonne, Harris, Isgrig, Lynch, McCallister, Payot, Sammarson, Wilson, Wynn.

Absent-- Supervisor Albers.

WAS. W. FAY, CLERK.

Approved, San Francisco, May 22, 1903. E. W. SWARTZ.

Mayor and ex-officio President of the Board of Supervisors.

City of San Francisco,  
County of San Francisco, Cal.,  
State of California.

Veria A. Winchester, being first duly sworn, deposes and says that she is duly and lawfully qualified as the Clerk of the City and County of San Francisco, State of California, for the purpose of receiving the files of the official records of said City and County of record in the County of the State of California, California.



That she has carefully compared the foregoing resolution,  
No. 2647 of the Board of Supervisors of the City and County of  
San Francisco, State of California, with the printed resolution  
published in the Evening Post, official newspaper of said City and  
County of San Francisco between the years 1899 and 1909, and that the  
foregoing is a full, true and correct copy of said resolution No. 2647,  
as appears in said official newspaper on file in the State Capitol  
at Sacramento.

IN TESTIMONY WHEREOF, she has hereunto placed her hand and  
seal this 1 day of July, 1909.

And she there is hereby directed to subscribe this resolution  
in the Evening Post Newspaper. (SEAL)

is made at Sacramento, San Francisco, August 11, 1909.  
Adopted by the following vote:  
Ayes: Eight Nays: None  
County, State  
Subscribed and sworn to before me this 1 day  
of July, 1909.

Notary Public for the State of California,  
My Comm. Expires Aug. 14, 1910.  
Approved, San Francisco, August 14, 1909. E. V. Smith,  
Mayor and ex-officio President of the Board of Supervisors.

City of Sacramento,  
County of Sacramento, Cal.,  
State of California

Verd A. Thompson, being first duly sworn, deposes and says  
that she is duly and regularly employed by the Board of Supervisors of  
the City and County of San Francisco, State of California, for the  
purpose of searching the files of the official newspapers of said City  
and County of record in the library of the State Capitol at Sacramento,  
California.

That she has carefully compared the foregoing resolution,

That she has carefully compared the foregoing resolution  
No. 2647 of the Board of Supervisors of the City and County of  
San Francisco, State of California, with the printed resolution  
published in the Evening Post, official newspaper of said City and  
County of San Francisco between the years 1900 and 1909, and that the  
foregoing is a full, true and correct copy of said resolution No. 2647  
as appears in said official newspaper on file in the State Capitol  
at Sacramento.

IN TESTIMONY WHEREOF, she has hereunto placed her hand and  
seal this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

(NAME) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_.



RESOLUTION NO. 2890.

RESOLVED, THAT THE BOARD OF Public Works be and it is hereby requested to make a survey of that portion of Lyon street granted to the City and County of San Francisco by the United States under Act of Congress of 1876, and to report a list of all obstructions within the lines surveyed.

The attention of the Board of Public Works is hereby called to the opinion of the City Attorney in the matter of the opening of Lyon street, filed in this office June 28th, 1902.

And the Clerk is hereby directed to advertise this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, August 11, 1902.

Adopted by the following vote:

Ayes-- Supervisors Alpers, Bent, Booth, Hoxton, Brauhart, Comte, Connor, Curtis, Loughery, Lynch, McClellan, Payot, Sanderson, Wilson, Van.

Absent-- Supervisors Brandenstein, D'Ancona, Eggers.

CHAS. W. PAY, Clerk.

Approved, San Francisco, August 14, 1902. H. E. Schmitz,  
Mayor and ex-officio President of the Board of Supervisors.

City of Sacramento, )  
County of Sacramento, ) ss.  
State of California)

Vera A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.

That she has carefully compared the foregoing resolution,



RESOLUTION NO. 1000.

RESOLVED, THAT THE BOARD OF Public Works be and it is hereby requested to make a survey of that portion of Lyon street, from to the City and County of San Francisco by the United States under Act of Congress of 1876, and to report a list of all obstructions within the lines surveyed.

The attention of the Board of Public Works is hereby called to the opinion of the City Attorney in the matter of the opening of Lyon street, filed in this office June 22d, 1902.

And the Clerk is hereby directed to cause this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, August 11, 1902.

Adopted by the following vote:

Ayes-- Supervisors Alpers, Bann, Hoelt, Henson, Brannhart, Comte, Connor, Curtis, Dougherty, Lynch, McCallum, Pett, Stevenson, Wilson, Wynn.

Absent-- Supervisors Brandenstein, D'Angona, Hager.

CHAS. W. TAY, Clerk.

Approved, San Francisco, August 14, 1902. H. H. Belmont, Mayor and ex-officio President of the Board of Supervisors.

City of Sacramento,  
County of Sacramento, ss.  
State of California)

Vera A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.

That she has carefully compared the foregoing resolution,

No. 2890 of the Board of Supervisors of the City and County of San Francisco, State of California, with the printed resolution published in the Evening Post, official newspaper of said City and County of San Francisco between the years 1899 and 1900, and that the foregoing is a full, true and correct copy of said resolution No. 2890, as appears in said official newspaper on file in the State Capitol at Sacramento, California.

IN TESTIMONY WHEREOF, she has hereunto placed her hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

of Congress of the 5th, 1894. When said order is received the Board of Public Works is requested to transmit the same to the Supervisors and to report its conclusions relative to the same.

(SEAL)

and to report its conclusions relative to the same.

And the Clerk is hereby directed to advertise this resolution in the Evening Post Newspaper.

In Witness Whereof, the Board of Supervisors, San Francisco, California, 1900.

Subscribed and sworn to before me this \_\_\_\_\_ day

of \_\_\_\_\_ 19\_\_\_\_.

Notary Public, State of California, County of \_\_\_\_\_, District of \_\_\_\_\_, Precinct of \_\_\_\_\_, City of \_\_\_\_\_, State of California.

WAS, V. MAY, Notary.

My Comm. Expires \_\_\_\_\_, 1900.

Acting Mayor and ex-officio President of the Board of Supervisors.

City of San Francisco,  
County of \_\_\_\_\_,  
State of California.

That I, \_\_\_\_\_, being duly sworn, depose and say that the foregoing is a true and correct copy of the resolution of the Board of Supervisors of the City and County of San Francisco, State of California, passed at a regular meeting of said Board, held on the \_\_\_\_\_ day of \_\_\_\_\_, 1900, and that the same is a full, true and correct copy of said resolution as the same appears in the official newspaper of said City and County of San Francisco, State of California, on file in the State Capitol at Sacramento, California.



[illegible]

THE UNIVERSITY OF CHICAGO

Published in the "Journal of the American Medical Association"

100-443887-100

\_\_\_\_\_

as appears in said official report.

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21. 10. 1958

(100)

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...the thing that makes...

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RESOLUTION NO. 3066.

WHEREAS, THE SUM OF \$6500 WAS set aside in the Budget of the current fiscal year for the purchase of lands required for the opening of Lyon street; therefore,

Resolved, That the Board of Public Works be and is hereby directed to solicit a tender from the owner of the "Miranda Grant" to sell to the City and County so much of said grant as will be required to open and extend Lyon and Green streets, in compliance with an Act of Congress of May 9th, 1876. When said tender is received the Board of Public Works is requested to transmit the same to the Supervisors and to report its conclusions relative to the acceptance of said tender.

And the Clerk is hereby directed to advertise this resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, October 20, 1902.

Adopted by the following vote:

Ayes-- Supervisors Alpers, Bent, Booth, Hoxton, Brandenstein, Braunhart, Connor, Curtis, D'Ancona, Eggers, Loughery, Lynch, McClellan.

Absent-- Supervisors Comte, Payot, Sanderson, Wilson, Wynn.

CHAS. W. PAY, Clerk.

Approved, San Francisco, October 22, 1902. H. U. BRANDENSTEIN.

Acting Mayor and ex-officio President of the Board of Supervisors.

City of Sacramento, )  
County of Sacramento, ) ss.  
State of California)

Vera A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.

WHEREAS, THE SUM OF \$5000 WAS PAID IN THE YEAR OF  
the current fiscal year for the purchase of lands required for the  
opening of Lyon street; therefore,

Resolved, That the Board of Public Works be and is hereby  
directed to solicit a tender from the owner of the "Whittman Grant" to  
sell to the City and County so much of said grant as will be required  
to open and extend Lyon and Green streets, in compliance with an Act  
of Congress of May 9th, 1876. When said tender is received the Board  
of Public Works is requested to transmit the same to the Supervisors  
and to report its conclusions relative to the acceptance of said tender.  
And the Clerk is hereby directed to advertise this resolution

in the Evening Post Newspaper.

In Board of Supervisors, San Francisco, October 20, 1902.

Adopted by the following vote:

Ayes-- Supervisors Alpers, Bent, Booth, Hoxton, Brandenburg,  
Brennan, Connor, Curtis, D'Angelo, Eggers, Langhorne, Lynch, McCallister,  
Absent-- Supervisors Conner, Paves, Sangerman, Wilson, Young.

CLERK, W. W. FAY, Clerk.

Approved, San Francisco, October 22, 1902. H. U. BRADY, Mayor.

Acting Mayor and ex-officio President of the Board of Supervisors.

City of Sacramento,  
County of Sacramento, Cal.  
State of California

Whereas A. Winchell, being a citizen of the State of California,  
has filed in the County of Sacramento, State of California, a  
copy of the City and County of San Francisco, State of California,  
for the purpose of securing the title of the official newspaper of said City  
and County of record in the library of the State of California,  
California.



San Francisco, State of California, with the printed resolution  
1902, as the same appears in the official newspaper of said City and  
published in the Evening Post, official newspaper of said City and  
by the County of San Francisco between the years 1899 and 1902, and that the  
foregoing is a full, true and correct copy of said resolution No. 306  
as appears in said official newspaper on file in the State Capitol

seal this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_  
as shown on plan filed \_\_\_\_\_ by the Board of Public Works of this office.

(SIAL)

requested to take down the wire in front of the house as well as the removal of the  
the wire from the front of the house and the removal of the wire from the  
the wire from the front of the house and the removal of the wire from the

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_.

The Clerk is hereby directed to transmit to the City Attorney all matters on file in this office relating to the opening of said Town street.

And the Club is hereby directed to advertise this Resolution  
in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, October 26, 1904.  
Adopted by the following vote:

Agents - Supervisors Agents, Daily, North, Boston, Providence,  
 Framingham, Concord, Middlebury, Amherst, Haverhill, Lowell, Springfield,  
 Albany - Supervisors Daily, Boston, Worcester, Lowell, Framingham,  
 W. Mass., N. Mass., etc.

Approved: San Francisco, January 22, 1901. H. B. McMillan,  
Acting Mayor and ex-officio President of the Board of Supervisors.



That she has carefully examined the foregoing statement,

No. 10000 of the Board of Supervisors of the City and County of

San Francisco, State of California, with the following

published in the Evening Post, official newspaper of said City and

County of San Francisco between the years 1880 and 1881, and that the

foregoing is a full, true and correct copy of said statement as

as appears in said official newspaper to file in the office of the

at Sacramento, California.

IN WITNESS WHEREOF, the said Board of Supervisors has caused

its seal to be hereunto set, and its hand to be hereunto

and is hereby its authorized officer to be hereunto set, and its

and the Clerk of said Board of Supervisors to be hereunto set.

Given in the County of San Francisco, California, this

10th day of January, 1881.

Witness my hand and seal of office this

10th day of January, 1881.

of

\_\_\_\_\_  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Notary Public for the State of California

\_\_\_\_\_  
Witness my hand and seal of office this

\_\_\_\_\_  
Notary Public for the State of California

\_\_\_\_\_  
Witness my hand and seal of office this

\_\_\_\_\_  
Notary Public for the State of California

\_\_\_\_\_  
Witness my hand and seal of office this

\_\_\_\_\_  
Notary Public for the State of California

RESOLUTION NO. 3067.

WHEREAS, THE CITY ATTORNEY advises, under date of June 28th, 1902, in the matter of opening and extending Lyon street, as provided by Act of Congress of May 9th, 1876, that the location of said Lyon street includes all land within eighty feet measured at right angles eastwardly from the eastern line of the Presidio, as said eastern line now exists and is marked upon the ground; and

Whereas, Certain persons are maintaining obstructions and are trespassing on said street without right against the City and County, as shown on plat filed by the Board of Public Works in this office, May 8, 1902; therefore

Resolved, That the City Attorney be and he is hereby requested to take such action in court as will cause the removal of said obstructions from Lyon street and the ejectment of trespassers therefrom, excepting in the case of the Miranda Grant, tenders for the purchase of which have been sought by the City and County, and to inform this Board of whatever requirements may be needed to enable him to institute proceedings and to effect the end desired.

The Clerk is hereby directed to transmit to the City Attorney all matters on file in this office relating to the opening of said Lyon street.

And the Clerk is hereby directed to advertise this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, October 20, 1902.

Adopted by the following vote:

Ayes-- Supervisors Alpers, Bent, Booth, Boxton, Brandenstein,

Braunhart, Connor, Curtis, D'Ancona, Eggers, Loughery, Lynch, McClellan,

Absent-- Supervisors Conte, Payot, Sanderson, Wilson, Wynn.

CHAS. W. FAY, Clerk.

Approved, San Francisco, October 22, 1902. H. U. BRANDENSTEIN,  
Acting Mayor and ex-officio President of the Board of Supervisors.



RESOLUTION NO. 2007.

WHEREAS, THE CITY ATTORNEY advises, under date of June 28th, 1902, in the matter of opening and extending upon street, as provided by Act of Congress of May 9th, 1897, that the location of said Lyon street includes all land within eighty feet measured at right angles easterly from the eastern line of the Presidio, as said eastern line now exists and is marked upon the ground; and

Whereas, Certain persons are maintaining obstructions and are trespassing on said street without right against the City and County, as shown on plat filed by the Board of Public Works in this office,

May 8, 1902; therefore

Resolved, That the City Attorney be and he is hereby requested to take such action in court as will cause the removal of said obstructions from Lyon street and the ejection of trespassers therefrom, excepting in the case of the Miranda Grant, tenants for the purpose of which have been noted by the City and County, and so inform this Board of whatever arrangements may be needed to enable him to institute proceedings and so effect the end desired.

The Clerk is hereby directed to transmit to the City Attorney all matters on file in this office relating to the opening of said street.

And the Clerk is hereby directed to advertise this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, October 20, 1902.

Adopted by the following vote:

Ayes-- Supervisors Alpers, Ross, Foxton, Brandenstein, Brannhart, Connor, Curtis, D'Amico, Hewitt, Johnson, McCallister, Absent-- Supervisors Bonds, Bates, Johnson, Wilson, Wynn.

Attest, W. RAY, Clerk.

Approved, San Francisco, October 22, 1902. W. U. HEARNSTADT,

Acting Mayor and ex-officio President of the Board of Supervisors.



City of Sacramento, )  
County of Sacramento, ) ss.  
State of California)

Vera A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.

That she has carefully compared the foregoing resolution, No. 3067 of the Board of Supervisors of the City and County of San Francisco, State of California, with the printed resolution published in the Evening Post, official newspaper of said City and County of San Francisco between the years 1899 and 1909, and that the foregoing is a full, true and correct copy of said resolution No. 3067, as appears in said official newspaper on file in the State Capitol at Sacramento, California

IN TESTIMONY WHEREOF, she has hereunto placed her hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 19 . . .

\_\_\_\_\_  
(S.M.L.)

City of \_\_\_\_\_  
County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 . . .

Vera A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.

City of Sacramento,  
County of Sacramento, ss.  
State of California)

Vern A. Winchester, being first duly sworn, deposes and says that she is duly and regularly elected by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of securing the files of the official newspapers of said City and County of record in the library of the State Capitol at Sacramento, California.

That she has carefully compared the foregoing list of \_\_\_\_\_ of the Board of Supervisors of the City and County of San Francisco, State of California, with the printed resolution published in the Evening Post, official newspaper of said City and County of San Francisco between the years 1899 and 1902, and that the foregoing is a full, true and correct copy of said resolution. \_\_\_\_\_ appears in said official newspaper on file in the State Capitol

at Sacramento, California.

In testimony whereof, she has hereunto set her hand and seal this \_\_\_\_\_ day of \_\_\_\_\_.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_.



RESOLUTION NO. 3254.

RESOLVED, THAT THE PETITION, proposed resolution and draft of memorial to the Congress of the United States of America, filed this day by R. Herman in the matter of the extension of Lyon street be and the same is hereby referred to the City Attorney for investigation and with the request that he advise the Board whether or not the existing rights of the City and County will be alienated by the passage of the resolution, and also as to whether or not it is to the interest of the City and County to take the action requested.

And the Clerk is hereby directed to advertise this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, December 22, 1902.

Adopted by the following vote:

Ayes-- Supervisors Bent, Booth, Bixton, Brandenstein, Braunhart, Conte, Connor, Curtis, D'Ancona, Eggers, Loughery, Lynch, McCrellan, Wilson, Wynn.

Absent-- Supervisors Alpers, Payot, Sanderson.

CHAS. W. FAY, Clerk.

Approved, San Francisco, December 26, 1902. M. E. SCHMITZ,  
Mayor and ex-officio President of the Board of Supervisors.

City of Sacramento, )  
County of Sacramento, ) ss.  
State of California)

Vear A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.



California.

and County of record in the library of the Public Library at Berkeley,  
purpose of searching the files of the official newspaper of said City  
the City and County of San Francisco, State of California, for the  
that she is duly and regularly employed by the Board of Supervisors of  
Vern A. Winchester, being that said person, before and after

That she has carefully compared the foregoing resolution,  
No. 3254 of the Board of Supervisors of the City and County of  
San Francisco, State of California, with the printed resolution  
published in the Evening Post, official newspaper of said City and  
County of San Francisco between the years 1899 and 1909, and that the  
foregoing is a full, true and correct copy of said resolution No. 3254,  
as appears in said official newspaper on file in the State Capitol  
at Sacramento, California.

IN TESTIMONY WHEREOF, she has hereunto placed her hands and  
seal this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(SEAL)

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 .



That she has been living in the same household

No. 1234 of the Board of Supervisors of the City and County of

San Francisco, State of California, with the proper registration

obtained in the year of 1911, official records of said City and

County of San Francisco, and in the year of 1912, and the

County of San Francisco, and in the year of 1913, and the

County of San Francisco, and in the year of 1914, and the

County of San Francisco, and in the year of 1915, and the

County of San Francisco, and in the year of 1916, and the

County of San Francisco, and in the year of 1917, and the

County of San Francisco, and in the year of 1918, and the

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County of San Francisco, and in the year of 1934, and the

County of San Francisco, and in the year of 1935, and the

County of San Francisco, and in the year of 1936, and the

County of San Francisco, and in the year of 1937, and the

County of San Francisco, and in the year of 1938, and the



RESOLUTION NO. 3404.

RESOLVED, THAT THE PETITION of R. Herman, filed December 22, 1902, that this Board memorialize the Congress of the United States of America to establish the easterly line of the Presidio Military Reservation as running northerly and parallel with Markin street, be and the same is hereby denied, and the City Attorney is hereby requested to take the action outlined in resolution No. 3067 of this Board, to cause the removal of obstructions from Lyon street and the ejectment of trespassers therefrom, it being the determination of the Board of Supervisors that the location of said Lyon street includes all land within eighty (80) feet, measured at right angles easterly from the eastern line of the Presidio, as said eastern line now exists and is marked upon the ground.

Further resolved, That in the event of proceedings being instituted by said R. Herman to have said easterly line of the Presidio established as expressed in his petition to this Board, that the City Attorney be and he is hereby requested to make the United States Government a party to the suit, if in his judgment he deems such action necessary.

And the Clerk is hereby directed to advertise this Resolution in The Evening Post Newspaper.

In Board of Supervisors, San Francisco, February 24, 1903.

Adopted by the following vote:

Ayes-- Supervisors Alpers, Booth, Brandenstein, Braunhart, Comte, Connor, Curtis, Eggers, Loughery, Lynch, McClellan, Payot, Wilson, Wynn.

Absent-- Supervisors Bent, Bexton, D'Ancona, Sanderson.

CHAS. V. PAY, Clerk.

Approved, San Francisco, February 27, 1903.

E. E. SCHMITZ,

Mayor and ex-officio President of the Board of Supervisors.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

marked upon the ground.

action necessary.

Adopted by the following vote:

In Board of Supervisors, San Francisco, January 22, 1901.

Attest: Secretary of Board, San Francisco, January 22, 1901.

Witness my hand and seal of office this 22nd day of January, 1901.

Mayor of San Francisco.

Approved, S. H. Brandeis, Secretary, U. S. Supreme Court.  
Major and ex-officio President of the Board of Governors.



City of Sacramento, )  
County of Sacramento, ) ss.  
State of California)

Vera A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of searching the files of the official newspapers of said City and County of record in the Library of the State Capitol at Sacramento, California.

That she has carefully compared the forgoing resolution, No. 3404 of the Board of Supervisors of the City and County of San Francisco, State of California, with the printed resolution published in the Evening Post, official newspaper of said City and County of San Francisco between the years 1899 and 1909, and that the foregoing is a full, true and correct copy of said resolution No. 3404, as appears in said official newspaper on file in the State Capitol at Sacramento, California.

IN TESTIMONY WHEREOF, she has hereunto placed her hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

\_\_\_\_\_  
(SEAL)

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 .



City of Sacramento,  
County of Sacramento,  
State of California

Verd A. Winchester, being first duly sworn, deposes and says that she is duly and regularly employed by the Board of Supervisors of the City and County of San Francisco, State of California, for the purpose of ascertaining the title of the official newspaper of said City and County of record in the Library of the State Capitol at Sacramento, California.

That she has carefully compared the foregoing resolution, No. 3404 of the Board of Supervisors of the City and County of San Francisco, State of California, with the printed resolution published in the Evening Post, official newspaper of said City and County of San Francisco between the years 1908 and 1909, and that the foregoing is a full, true and correct copy of said resolution No. 3404 as appears in said official newspaper on file in the State Capitol at Sacramento, California.

IN TESTIMONY WHEREOF, she has hereunto placed her hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Seal) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_, 19\_\_\_\_.

# The City and County of San Francisco,

By.....Mayor.

TO

## DEED.

Dated,

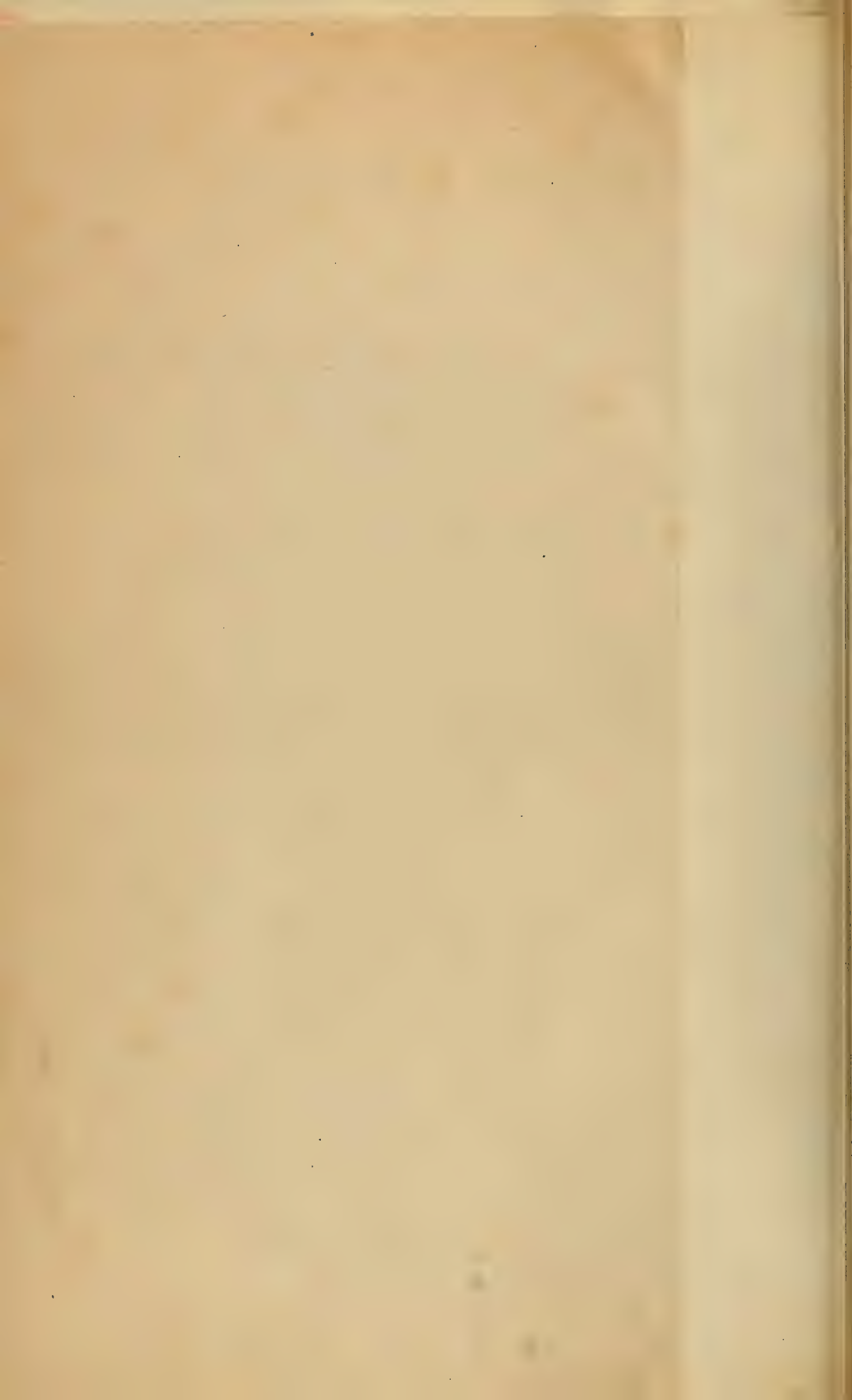
Consideration: The premises, &c.

Stamp

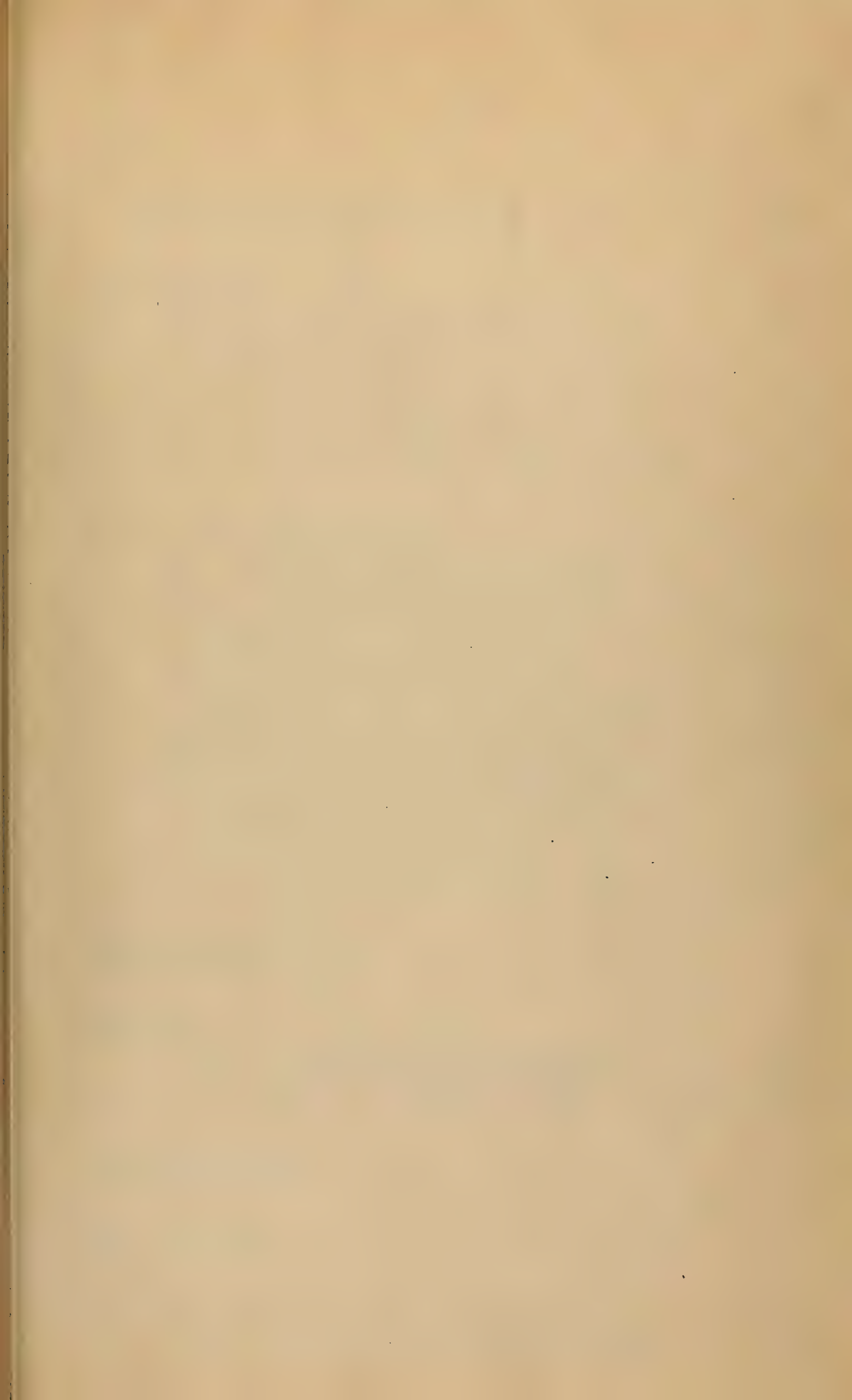
Recites that upon a petition duly verified presented by said second party to the Board of Supervisors of said City and County filed..... numbered..... such proceedings were had under and by virtue of an Act of the Legislature to expedite the settlement of land titles in said City and County approved March 24, 1870, that afterwards the said Board of Supervisors, by an order entered in their Minutes on..... did award a grant to the lands hereinafter described to second party, and due publication was made of such award, &c., and no notice of any adverse claim has hitherto been filed, &c.

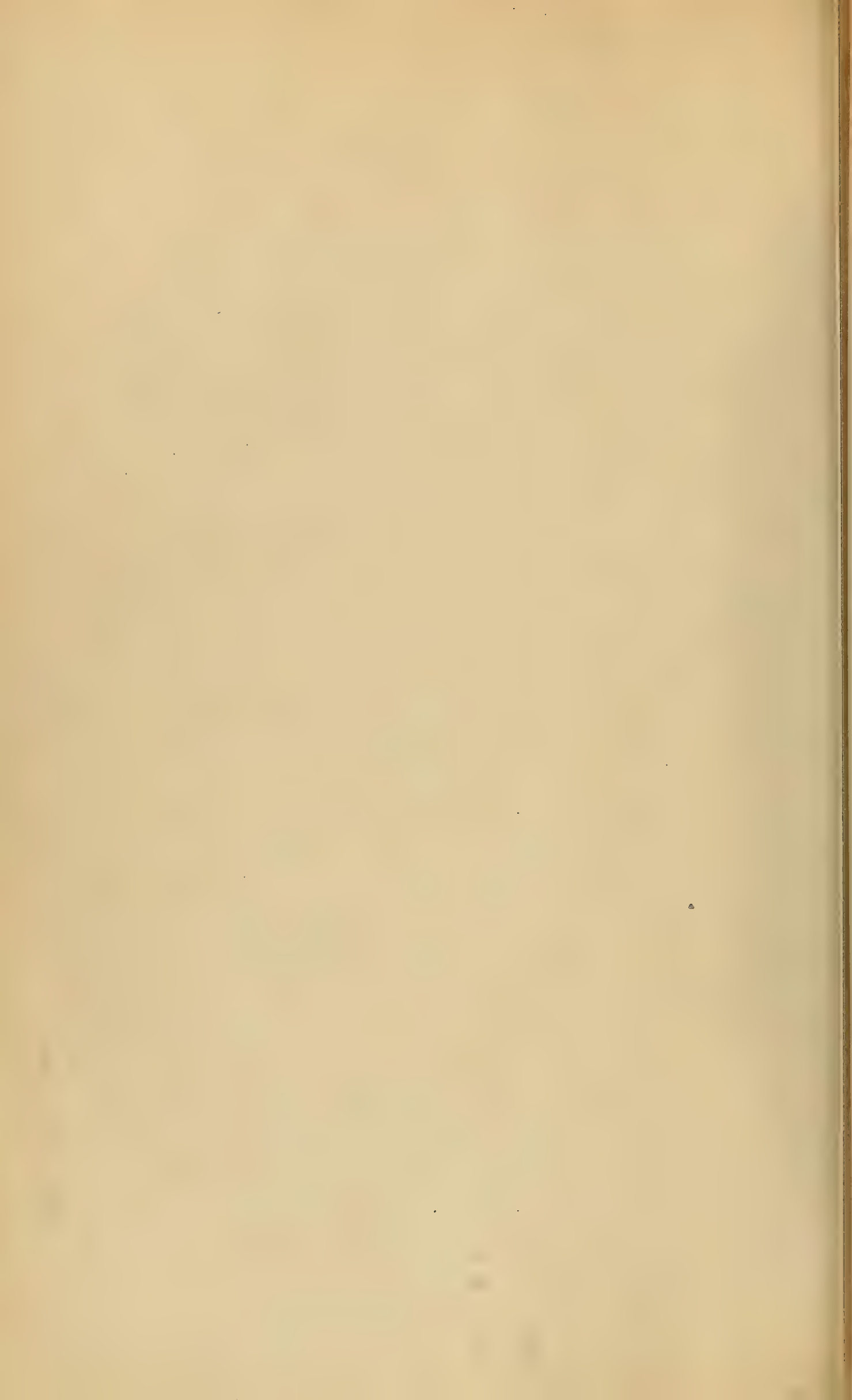
Now, &c., in consideration of the premises, and in accordance with the provisions of an Act of Congress, approved March 8, 1866, to quiet the title to certain lands within the corporate limits of the City of San Francisco, and in confirmation (as regards the premises hereinafter described) of the provisions of an Order of the Board of Supervisors known as No. 800 for the settlement and quieting titles to land in said City and County, &c., ratified and confirmed by an Act of the Legislature passed March 27, 1868 and another Act supplemental thereto, approved as above and also under and by virtue of the provisions of said Act of the Legislature, approved March 24, 1870, said second part having quit claimed and peaceably delivered the possession of all lands claimed by said petitioner reserved by the Committee of the Board of Supervisors on Outside Lands &c.

Does grant, remise, release, convey and quit claim unto second part..... heirs and assigns forever, all and singular the following piece of land in the City and County of San Francisco :









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1. The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science. The author discusses the various theories of the origin of life, and shows that the most plausible is the theory of spontaneous generation. This theory is based on the fact that the conditions of the early earth were such that the formation of organic matter was a natural consequence of the chemical processes going on at the time.

2. The second part of the paper is devoted to a detailed discussion of the theory of spontaneous generation. The author shows that this theory is based on the fact that the conditions of the early earth were such that the formation of organic matter was a natural consequence of the chemical processes going on at the time. He discusses the various experiments which have been conducted to test this theory, and shows that the results are in favor of it.

3. The third part of the paper is devoted to a discussion of the theory of evolution. The author shows that this theory is based on the fact that the conditions of the early earth were such that the formation of organic matter was a natural consequence of the chemical processes going on at the time. He discusses the various experiments which have been conducted to test this theory, and shows that the results are in favor of it.

4. The fourth part of the paper is devoted to a discussion of the theory of the origin of life. The author shows that this theory is based on the fact that the conditions of the early earth were such that the formation of organic matter was a natural consequence of the chemical processes going on at the time. He discusses the various experiments which have been conducted to test this theory, and shows that the results are in favor of it.

5. The fifth part of the paper is devoted to a discussion of the theory of the origin of life. The author shows that this theory is based on the fact that the conditions of the early earth were such that the formation of organic matter was a natural consequence of the chemical processes going on at the time. He discusses the various experiments which have been conducted to test this theory, and shows that the results are in favor of it.

6. The sixth part of the paper is devoted to a discussion of the theory of the origin of life. The author shows that this theory is based on the fact that the conditions of the early earth were such that the formation of organic matter was a natural consequence of the chemical processes going on at the time. He discusses the various experiments which have been conducted to test this theory, and shows that the results are in favor of it.

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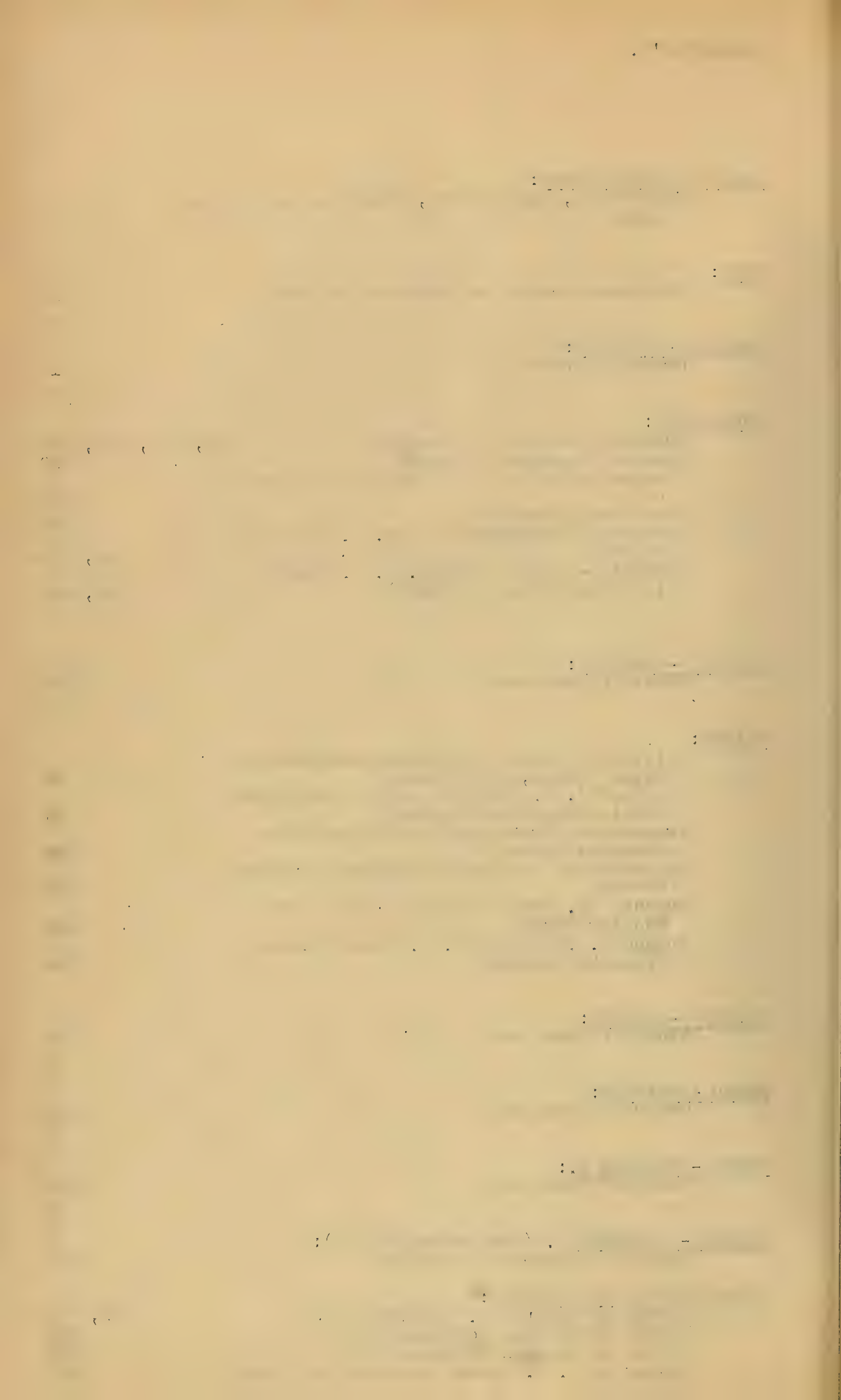
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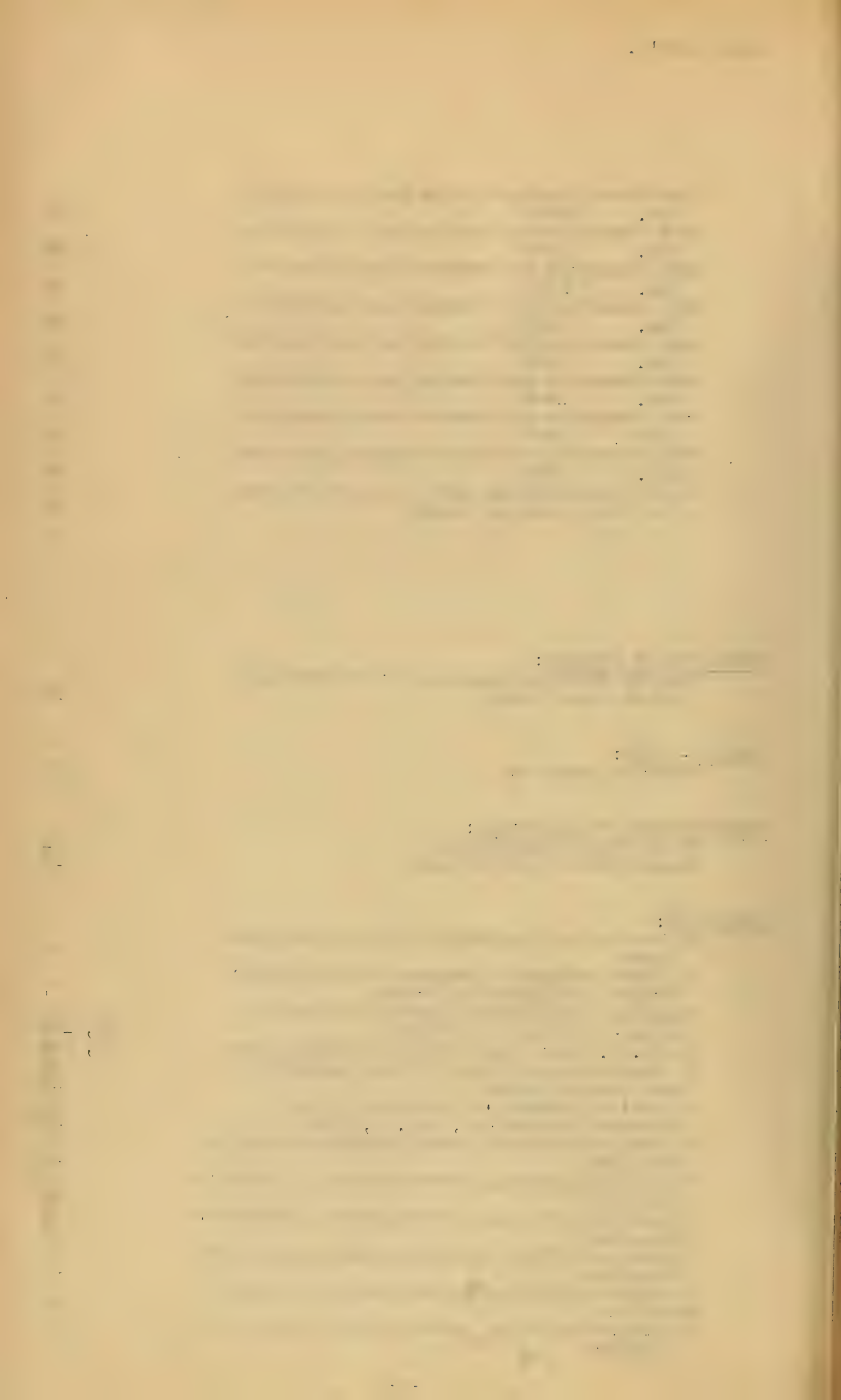
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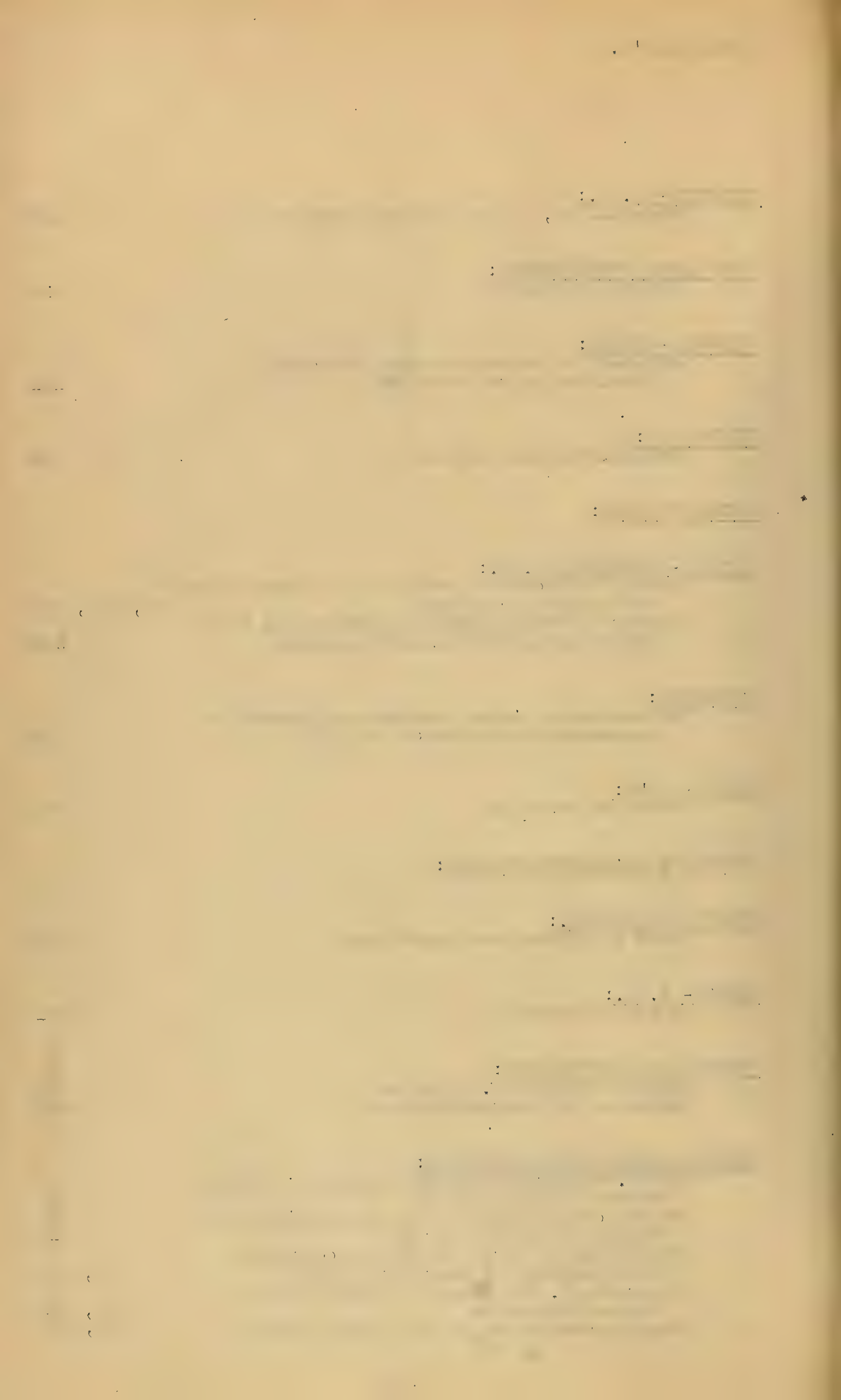
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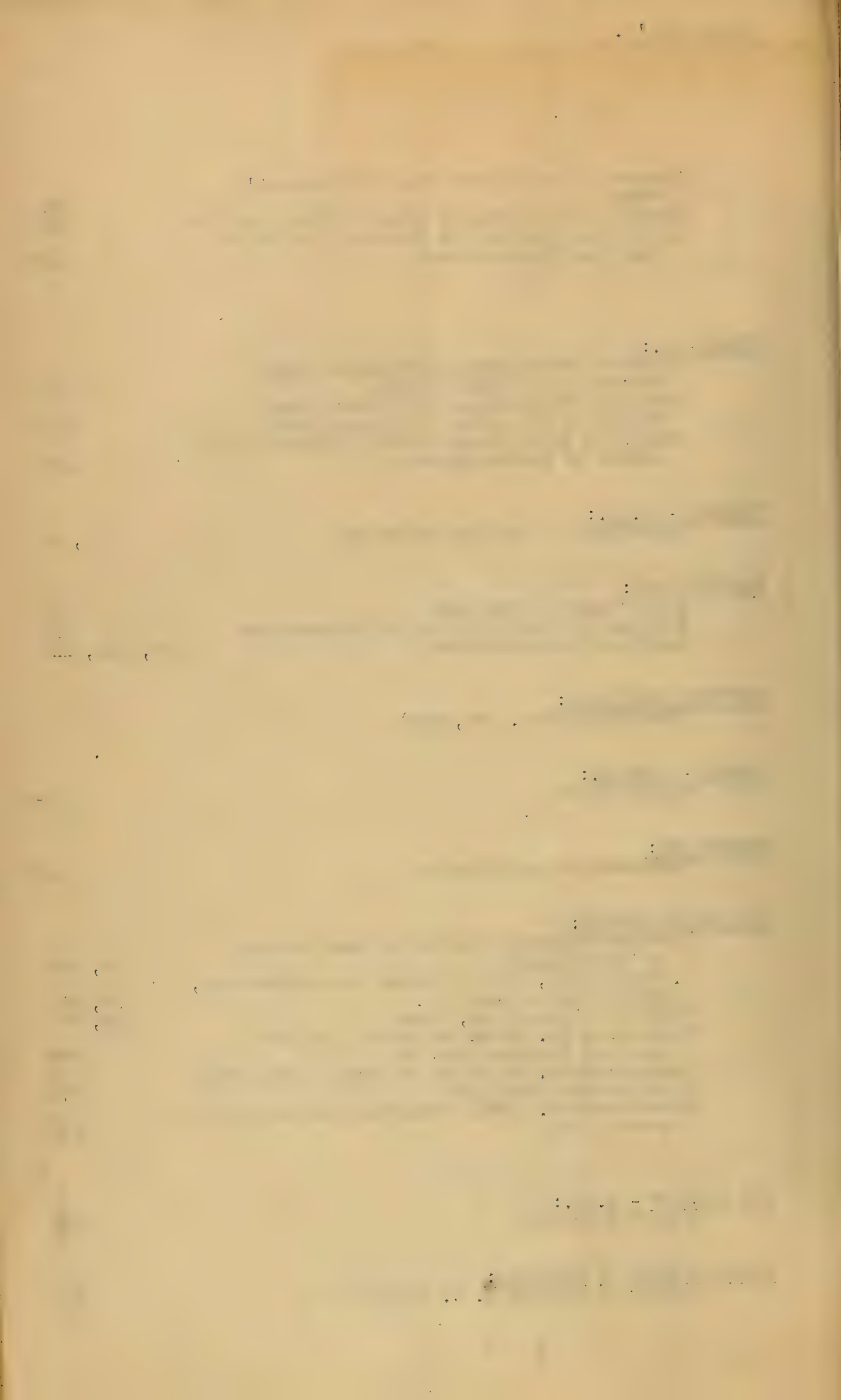


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**RESOLUTION NO. 3074. (New Series.)**

WHEREAS, ON THE 5TH DAY OF March, A. D. 1906, this Board by Ordinance of Grant No. 548 adjudged and awarded grants of land to the following persons, to wit: William Thorpe, Otto Pingel and Mary Pingel, his wife; Michael A. McLaughlin, Charles C. Straudberg, the Holmes Investment Co., a corporation; Ella K. Hotelling, widow, and George W. Duncan; and

Whereas, Said Ordinance was thereafter published in the "Evening Post," the official newspaper of this City and County, on the 8th and 9th days of March, A. D. 1906, as appears by the files of said newspaper of those days still extant; and

Whereas, The fire which occurred in this city on the 18th, 19th and 20th days of April, 1906, destroyed the original record of said Ordinance, and in consequence thereof the publication as required by law giving notice of said grants so adjudged and awarded has never been made; and

Whereas, The said above named grantees of the City and County of San Francisco by themselves, or by their duly authorized agents, have heretofore filed petitions with this Board setting forth amongst others the facts hereinbefore recited, and requesting that the Board of Supervisors direct that the necessary proceedings leading up to the issuance of certificates of Land Grants be continued, to the end that deeds may be obtained from the City and County of San Francisco to the aforesaid grantees, respectively, for the respective land or lands awarded to each of them; now therefore be it

Resolved, That the Clerk of this Board be and he is hereby directed to cause to be published under and in pursuance to said Ordinance of Grant No. 548, and in pursuance of an Act of the Legislature of March 24, 1870, entitled "An Act to Expedite Settlement of Land Titles in the City and County of San Francisco," etc., notices of land grants adjudged and awarded under said Ordinance of Grant No. 548 to said herein named grantees of the City and County.

And the Clerk is hereby directed to advertise this Resolution in the Evening Post newspaper.

In Board of Supervisors, San Francisco, December 21, 1908.

Adopted by the following vote:

Ayes—Supervisors Bancroft, Booth, Broderick, Center, Comte, Connolly, D'Ancona, Hocks, Jennings, Johnston, McLeran, Murdock, Murphy, Payot, Pollok, Rixford.

Absent—Supervisors Giannini, McAllister.

JOHN E. BEHAN, Clerk.  
Approved, San Francisco, December 24, 1908.

EDWARD R. TAYLOR,  
Mayor and ex-officio President Board of Supervisors.  
dec28-1t

### *Closing Golden Gate Cemetery*

**BILL NO. 741. ORDINANCE NO. 640. (New Series.)**

GIVING NOTICE TO GRANTEES OF portions of the City Cemetery, formerly known as "Golden Gate Cemetery," to provide for the removal on or before July 1, 1909, of human bodies or remains interred therein.

Whereas, the bodies of the indigent dead of the City and County of San Francisco were buried for many years in the City Cemetery, formerly known as "Golden Gate Cemetery," and the Board of Supervisors heretofore passed resolutions assuming to grant to various benevolent and charitable societies certain described portions of said cemetery, for the purpose of interring therein the bodies of their deceased members or beneficiaries; and

Whereas, the Supreme Court in the case of La Societa Italiana d'Mutua Benificenza, appellant, vs. City and County of San Francisco et al., respondents (Cal. Reports, 131,169) declared that said private grants were unlawful; and

Whereas, the Board of Supervisors by Order No. 3096, approved June 15, 1897, prohibited the further burial of bodies of the dead within the confines of said City Cemetery; and said Board by Ordinance No. 25, approved March 30, 1900, prohibited the burial of the dead within the city and county of San Francisco; and

Whereas, it is now essential to the health, well-being and comfort of the inhabitants of the city and county of San Francisco, that all bodies interred in said City Cemetery be removed therefrom in order to permit of the use of the land for general park purposes; now, therefore,

Be it ordained by the People of the City and County of San Francisco, as follows:

Section 1. That notice is hereby given to the following named societies and organizations and all societies or organizations who have been heretofore granted permission to inter the bodies of their deceased members or beneficiaries in said City Cemetery, for-

merly known as "Golden Gate Cemetery," to provide for the disinterment and removal of said bodies on or before July 1, 1909, to wit:

Improved Order of Red Men; Slavonic Mutual Benevolent Society; Greek-Russian-Slavonian Benevolent Society; German Benevolent Society; Scandinavian Society; French Benevolent Society; Congregation Sherith Israel; Congregation Beth Israel; Congregation Schaari Zeideck; Italian Benevolent Society; Societa Cosmopolita Italiana d'Mutua Benificenza; Italian Mutual Benevolent Society; Master Mariners' Benevolent Association; Ladies' Seamen's Friend Society; St. Andrew's Society and Caledonian Club; Grand Army of the Republic; Society of Old Friends; Sons and Daughters of Old Friends; Knights of Pythias; Golden Gate Lodge No. 2007, G. U. O. of O. F. A.; Japanese Colony of San Francisco; Qui Son Tong Company; Hop Wo Association; Ning Yung Association; Christian Chinese Society, and Chuc Sen Tong Company.

Section 2. The Clerk of this Board is hereby authorized and instructed to serve upon the hereinbefore named societies and organizations a copy of this Ordinance.

Section 3. This Ordinance shall take effect immediately.

In Board of Supervisors, San Francisco, December 21, 1908.

After having been published five successive days, according to law, taken up and finally passed by the following vote:

Ayes—Supervisors Bancroft, Booth, Broderick, Center, Comte, Connolly, D'Ancona, Hocks, Jennings, Johnston, McLeran, Murdock, Murphy, Payot, Pollok, Rixford.

Absent—Supervisors Giannini, McAllister.

JOHN E. BEHAN, Clerk.  
Approved, San Francisco, December 31, 1908.

EDWARD R. TAYLOR,  
Mayor and ex-officio President of the Board of Supervisors.  
Jan2-1t

RESOLVED, THAT THE FOLLOWING applications for grants of land and for amended city deeds be and the same are hereby denied, it being impossible, upon the evidence presented to the outside lands committee of this board, to determine with certainty that the applicants therein named are entitled to the grant of land or to the amended city deed, as the case may be, to wit:

Land grants—

Of Wm. F. Egan, for a grant of land in W. A. Block No. 259, filed August 6, 1907.

Of Anna White and Adele M. White, for a grant of land in 100-vara lot No. 57 of the 50-Vara Survey, filed August 11, 1907.

Of Curtis H. Lindley, for a grant of land in W. A. Block No. 194, filed September 11, 1907.

Of Gregory Phelan et al., for a grant of land in W. A. Block No. 72, filed September 17, 1907.

Of Morris J. Blackman, for a grant of land in W. A. Block No. 453, filed September 27, 1907.

Of S. Lucas Company, a corporation, for a grant of land in W. A. Block No. 150, filed September 27, 1907.

Of Simon T. Meyer, for a grant of land in W. A. Block No. 196, filed October 4, 1907.

Of Jeremiah O'Keefe, for a grant of land in Mission Block No. 138, filed October 4, 1907.

Of Bruce Heathcote, for a grant of land in W. A. Block No. 342, filed October 1, 1907.

Of Moses Ehrenberg, for a grant of land in W. A. Block No. 224, filed October 3, 1907.

Of Rudolph Spreckels, for a grant of land in Mission Block No. 36, filed October 10, 1907.

Amended city deeds—

Of Peter A. Coleman and Augusta Coleman, his wife, for an amended deed to a portion of Potrero Nuevo Block No. 119, filed July 7, 1906.

Of Romain McKenzie, for an amended deed to a portion of Outside Land Block No. 971, filed July 7, 1906.

Of Salvatore Quarararo, for an amended deed to a portion of Western Addition Block No. 97, filed July 7, 1906.

Of Orville D. Baldwin, for an amended deed to a portion of Outside Land Block No. 125, filed July 7, 1906.

Of George U. Hind, for an amended deed to a portion of Western Addition Block No. 491, filed July 7, 1906.

Of Martha A. Hams, for an amended deed to a portion of Outside Lands Block No. 1090, filed July 21, 1906.

Of Catherine T. McCormick, for an amended deed to a portion of Western Addition Block No. 150, filed July 24, 1906.

Of Philip Yager and Ursula Yager, his wife, for an amended deed to a portion of Western Addition Block No. 593, filed July 24, 1906.

Of Malin Simpson, wife of Alfred Hazzard Simpson, for an amended deed to a portion of Western Addition Block No. 382, filed July 24, 1906.

Of the Newton Realty Company, a corporation, for an amended deed to a portion of Outside Land Block No. 1090, filed August 23, 1906.

Of Lucia Price, for an amended deed to a portion of Western Addition Block No. 609, filed August 23, 1906.

Of Joseph Sheehan, for an amended deed to a portion of Mission Block No. 144, filed September 27, 1906.

Of Carl V. Kronquist, for an amended deed to a portion of Potrero Nuevo Block No. 156, filed September 27, 1906.

Of Maries S. Murphy, wife of Eugene P. Murphy, for an amended deed to a portion of Western Addition Block No. 266, filed September 27, 1906.

Of Wilfred E. Arding and Camille E. Arding, his wife, for an amended deed to a portion of Outside Land Block No. 681, filed September 27, 1906.

Of Elisabeth Michel, for an amended deed to a portion of Potrero Block No. 156, filed August 6, 1907.

Of Raymond W. Ryan, for an amended deed to a portion of Outside Land Block No. 1063, filed August 6, 1907.

Of Earhold Guttersen and Helena Guttersen, his wife, for an amended deed to a portion of Mission Block No. 173, filed September 17, 1907.

Of James West, for an amended deed to a portion of Western Addition Block No. 367, filed September 17, 1907.

Of Watson Brown, for an amended deed to 50-vara lot No. 1250, filed October 4, 1907.

Of James Carolan, for an amended deed to a portion of Western Addition Block No. 832, filed October 4, 1907.

Of Ada I. McMahan, wife of Mabry McMahan, for an amended deed to a portion of Outside Land Block No. 967, filed October 4, 1907.

Of Elizabeth M. Muir Mugan, wife of William G. Mugan, for an amended deed to a portion of Western Addition Block No. 267, filed October 1, 1907.

Of Charles S. Laumeister, for an amended deed to a portion of Western Addition Block No. 593, filed September 27, 1907.

Of Bina Bello, widow, for an amended deed to a portion of Mission Block No. 116, filed September 27, 1907.

Further resolved, that all fees paid by applicants when filing the above applications, be and the same are hereby ordered refunded.

And the Clerk is hereby directed to advertise this Resolution in the Evening Post Newspaper.

In Board of Supervisors, San Francisco, January 6, 1907.

Adopted by the following vote:  
Ayes—Supervisors Booth, Brandenstein, Brenner, Center, Comte, D'Ancona, Raymondville, Magee, McLeran, Murdock, Murphy, O'Neill, Payot, Rixford, Sachs, Stafford, Sullivan, Tveitmo.

JOHN E. BEHAN, Clerk.  
Approved, San Francisco, January 9, 1908.

EDWARD R. TAYLOR,  
Mayor and ex-officio President of the Board of Supervisors.  
Jan1-1t







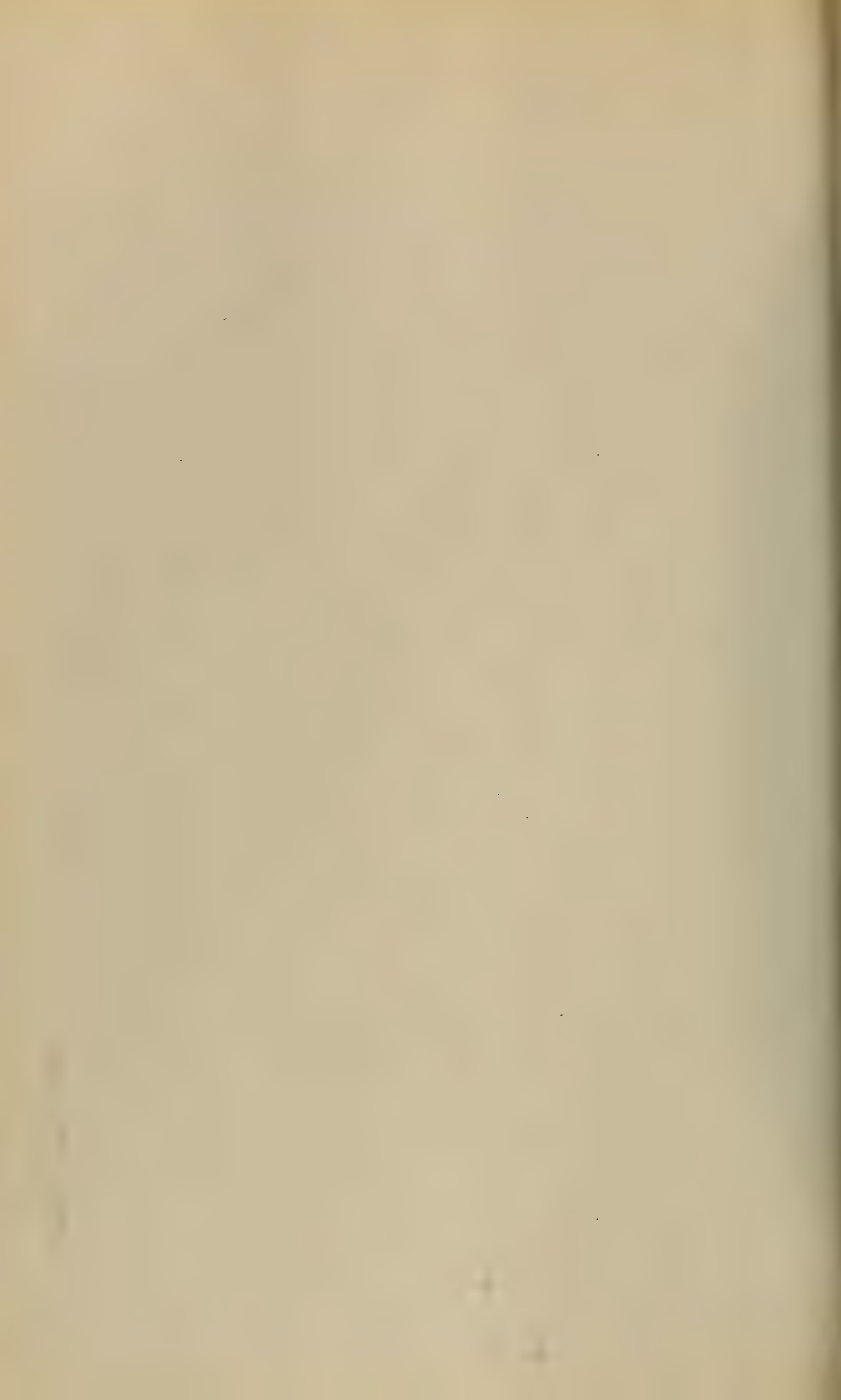












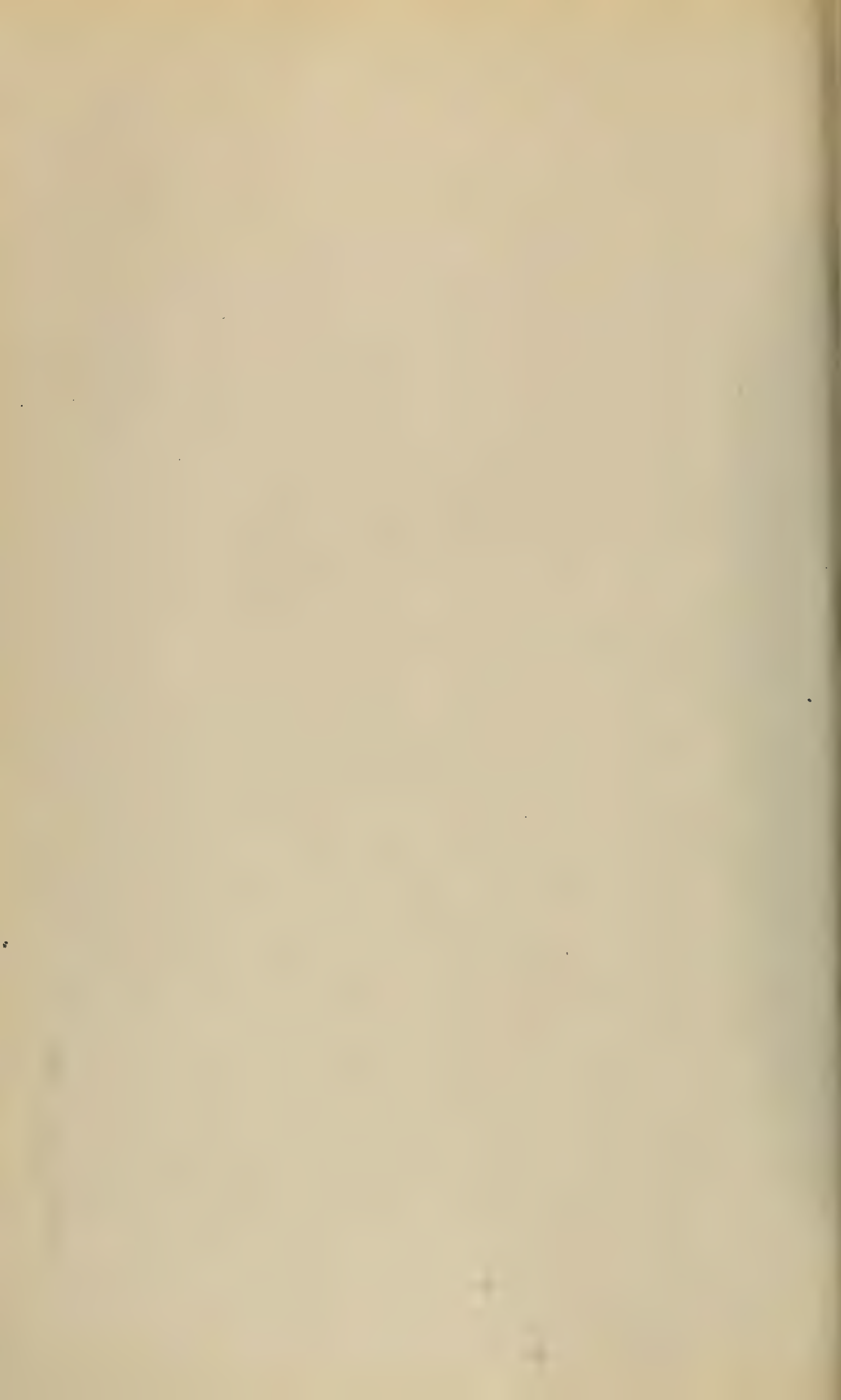






























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